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# "WITHOUT UNDERSTANDING": THE FBI AND POLITICAL SURVEILLANCE, 1908-1941

DAVID JOSEPH WILLIAMS

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*University of New Hampshire*

**Ph.D 1981**

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"WITHOUT UNDERSTANDING"  
THE FBI AND POLITICAL SURVEILLANCE, 1908-1941

BY

DAVID J. WILLIAMS  
B.A. (History), Marquette University, 1974

A DISSERTATION

Submitted to the University of New Hampshire  
in Partial Fulfillment of  
the Requirements for the Degree of

Doctor of Philosophy  
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Department of History

September 1981

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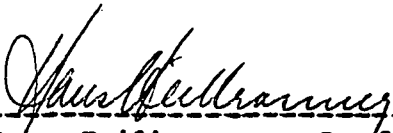
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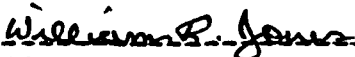
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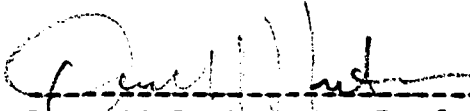
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Professor of History



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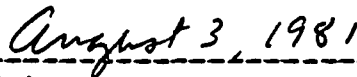
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-----  
Darrett B. Rutman, Professor of History



-----  
William Preston, Jr., Professor of History  
John Jay College of Criminal Justice,  
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Date

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ABSTRACT

"WITHOUT UNDERSTANDING"

THE FBI AND POLITICAL SURVEILLANCE, 1908-1941

by

David J. Williams

University of New Hampshire

By 1941, the Federal Bureau of Investigation, created in 1908 as the Justice Department's Bureau of Investigation, had become a vast, influential and semi-independent bureaucracy. Under the close scrutiny of Director J. Edgar Hoover, the FBI publicly promoted its criminal investigation capabilities and highlighted dramatic episodes such as the Dillinger case. At the same time, however, the FBI unilaterally created a covert code of political crimes and conducted numerous illegal investigations of both prominent and ordinary Americans.

This dissertation focuses on the development of FBI political surveillance between 1908 and 1941. Discussion of FBI enforcement of the criminal law will be limited to the agency's implementation of political surveillance investigations. Special attention is given to analyzing the evolution of surveillance techniques, and the variety of surveillance methods. Who were the targets of political espionage? To what extent did the FBI



spy on legal political activities? The study will also discuss efforts of the executive and legislative branches to control FBI political surveillance activities.

This dissertation relies primarily upon FBI investigative files and Bureau memorandums in the custody of the National Archives, and FBI files acquired through the Freedom of Information Act. Other documentary evidence is drawn from the Congressional Record, congressional hearings, court records and decisions, manuscript collections, newspapers, and memoirs.

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## Introduction

The Federal Bureau of Investigation (FBI) was founded in 1908 with the primary purpose of investigating violations of the anti-trust and banking laws. By 1941, the FBI was a semi-autonomous agency, free from the normal restraints placed on other federal departments and agencies. In 1939, for example, the Bureau may have unilaterally developed contingency plans for the preventive detention of individuals it considered dangerous to the nation's internal security. Had such a plan ever been put into effect it would have clearly breached Constitutional rights, but there is no indication that the FBI sought either the President's or the Attorney General's permission. Most of the individuals placed on the Bureau's detention list were not serious threats to the nation's security. Congressman Vito Marcantonio, a member of the American Labor Party and a persistent critic of President Franklin Roosevelt's foreign policy, for example, was put on the detention index after delivering a nationwide radio address on May 30, 1941. Later the list would include persons such as Martin Luther King, Jr., Yale Law School's Constitutional scholar Thomas I. Emerson, Frank Donner, a New York labor lawyer who was critical of the Bureau, Dr. Quentin E. Young, chief of Medicine at Cook County (Illinois) Hospital, and Ken Lawrence, a civil rights and peace

activist.[1]

The development of FBI political surveillance from its founding in 1908 through 1941 and the implementation of programs such as the deportation raids of 1920 and the custodial detention plan are the subject of this dissertation. It will also consider how the FBI the Bureau came to exercise the authority that it was never officially granted. The role of Congress, the Executive, and the courts in this process will also be examined. I will argue that illegal FBI political surveillance and aggressive intelligence activities are the result of institutional failures and conscious policy decisions, and not simply the product of FBI director J. Edgar Hoover's xenophobia, anti-communism, and racism. Had the Congress, the Executive, and, to a lesser extent, the courts exercised their Constitutional responsibilities and taken more seriously criticism of FBI abuses, Hoover would never have had the opportunity to build his counterintelligence empire. Political leaders, however, consistently found anti-crime and anti-radical sloganeering more attractive and thus paid little more than lip service to preserving the rights of minorities and political dissidents. There were, of course, exceptions. Representative Walter Huddleston of Alabama, a courageous defender of the foreign-born worker, sponsored legislation to curb FBI abuses at the height of the first Red Scare (1919-1920). Few listened and fewer supported his proposal. Similarly, Senator George Norris of Nebraska challenged the FBI on the eve of the Second World War. In February 1940, Norris criticized early morning raids in

Detroit during which the FBI arrested and held incommunicado 10 men and a woman. The suspects, who had been active in recruitment for the Abraham Lincoln Brigade, had allegedly violated a federal law prohibiting such activities. Despite evidence that indicated that Bureau agents had violated the rights of the Detroit defendants, the Senate refused to step-in and conduct an investigation of the FBI's growing internal security responsibilities.[2]

But these failures do not completely explain why the FBI conducted non-criminal, politically-motivated investigations in the first place. Federal political surveillance can only be understood in the context of America's nativist and anti-radical traditions. FBI political surveillance served to stabilize industrial relations and limit democratic participation in the political process: it helped to make the United States safe for corporate capitalism. Political and economic leaders used the Bureau in an attempt to undermine popular support of reform and radical movements. They understood, as others had before them, that spies, informers, and agent provocateurs could effectively encourage infighting and spread distrust within targeted organizations. Essentially, the Bureau was the official counterpart to the private detective agencies hired by industrialists to intimidate the labor force and preserve the open-shop, services which Jerold Auerbach has called an "instrument of industrial warfare." [3]

The growth of the FBI's power and its impact on individual rights prior to the Second World War is an important aspect of modern American history. Yet historians have given this important subject only peripheral treatment. Part of the problem lies in the lack of primary source materials. For over 60 years, the FBI did not allow any independent researchers to review its investigative files. On occasion, however, the Bureau leaked material to friendly congressmen, sympathetic journalists, and others who would use the material to discredit critics or to write favorable reviews, articles, and books. Then, in 1974, in the wake of the Watergate scandals and revelations of intelligence agency abuses, Congress amended the 1966 Freedom of Information Act. For the first time, federal law required federal agencies, including the FBI, to open their vast files to public scrutiny. Thomas Emerson has summed up the amended law's importance: "Few developments in our time have done more than the FOIA to tear away the veil of government secrecy and to promote the participation of citizens in the democratic process." My own use of the FOIA will be discussed later in this introduction.[4]

A review of previous histories of the FBI suggests that there is another reason why the early history of the FBI has not been carefully examined. FBI surveillance activities prior to the Second World War have been, for the most part, discussed in the context of the intelligence abuses of the Cold War and have never been considered important enough to merit a separate study. Reflecting this sentiment, former assistant FBI director Courtney

Evans has concluded that Bureau activities during this period have "little bearing on the modern-day FBI unless one accepts the thesis that Hoover's involvement as a young Justice Department official (from 1919 through 1924) may have unduly influenced his unwavering belief in and public warning against the 'communist conspiracy' over the succeeding 50 years." Evans' attempt to pass off this period as unimportant has not attracted much support among professional historians. And despite their agreement with Evans that Hoover did solidify his power during the 1920's and early 1930's, little has been done to explain the significance of the Bureau's formative years.[5]

The most thorough congressional inquiry into FBI intelligence activities proceeded from a similar assumption. In 1975-1976, the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, popularly known as the "Church Committee", investigated the FBI, the Central Intelligence Agency, the National Security Agency, and the intelligence operations of the Nixon White House. Yet the committee's final report, Intelligence Activities and the Rights of Americans, devotes only a few of its almost 350 pages to the pre-World War II era. A companion volume, Supplementary and Detailed Staff Reports on Intelligence Activities and the Rights of Americans, does little better. Of its 982 pages, 14 relate the history of the FBI prior to 1936, and this discussion is little more than a rehash of Max Lowenthal's Federal Bureau of Investigation (1950).[6]

Lowenthal's book, published at the height of post-war political repression, traced the history of the Bureau from its founding through the late 1940's. Lowenthal, a graduate of the Harvard Law School, had been secretary to the National Commission on Law Observance and Enforcement (Wickersham Commission) in the late 1920's and a consultant to Senator George Norris ten years later. Given this experience, Lowenthal was eminently qualified to examine FBI investigative activities. He had carefully studied the Bureau's history and jurisdiction in criminal and security matters. In 1940, at Norris's request, Lowenthal prepared several detailed briefs which called attention to past Bureau abuses and to erroneous claims made by the Bureau as part of its public relations campaign. This project served as a pilot study for The FBI. [7]

The book, like the Norris reports, was extremely critical of the FBI. Like many others during the McCarthy era, Lowenthal was particularly concerned about the FBI's role in the post-war repression. Following a careful study of the first Red Scare, and finding that repression during the 1940's was similar to that of the 1920's, Lowenthal concluded that the methods used by the Bureau were "abhorrent to democracy," threatened Constitutional government, and seriously violated individual rights. [8] The Bureau tried to suppress the work. In an attempt to discredit Lowenthal and impugn his integrity, he was called before a House Committee to testify in executive session. FBI agents attempted to persuade booksellers not to stock the book. The Bureau also prepared and distributed derogatory materials and book



reviews.[9] While ultimately unsuccessful, the Bureau managed to stir up enough negative publicity to limit the book's impact and call into question the author's integrity and credibility. For example, in 1972, the liberal historian Paul Murphy branded the Lowenthal book "hypercritical".[10] Nevertheless, the abuses outlined by Lowenthal seem tame compared to what the Senate committee uncovered in 1976, in part, because Lowenthal's research was limited to publicly available sources such as the Congressional Record, Congressional hearings, and court records.

While the FBI is the most complete early study of the Bureau, the book can be criticized on several grounds. By selectively culling from public records, Lowenthal develops several erroneous interpretations. The most serious concerns the founding of the Bureau by Attorney General Charles Bonaparte in 1908. Lowenthal argues that Congress opposed the creation of the FBI, fearing that the Bureau would become a political police in the European tradition. But he fails to explain why Congress did not simply refuse to appropriate funds to run the Bureau. As we will see, the story is more complex than Lowenthal is willing to concede. Nor does he try to explain why Hoover and the FBI were so popular in the 1930's and into 1940's. Despite these and other flaws, the FBI remains an invaluable source for research into the early history of the Bureau.[11]

In order to discredit Lowenthal and The FBI, Hoover commissioned Don Whitehead, a Pulitzer prize-winning journalist, to write a more favorable history of the Bureau. With access to

selected FBI documents, Whitehead published The FBI Story: A Report to the American People (1956). [12] Not surprisingly the book exonerated Hoover of Lowenthal's charges, occasionally admitting, however, that some policies pursued by the Bureau, especially the deportation raids of 1920, were ill-conceived and poorly executed. More sophisticated than the journalistic tributes of the 1930's, Whitehead's book contained important new information. For the first time, President Franklin Roosevelt's 1936 order lifting the Justice Department ban on political surveillance was made public. [13] But like the Lowenthal book (and perhaps because of it), The FBI Story suffers from serious methodological and interpretive shortcomings. Whitehead erroneously claims that Attorney General Bonaparte created the Bureau in an effort to combat Congressional corruption. Congress prohibited the Attorney General from borrowing Secret Service agents, Whitehead argues, because it feared investigations of members' shady dealings. The legal and Constitutional questions actually addressed by the 60th Congress and Attorney General Bonaparte are never mentioned, leaving one with the impression that Congress never expressed any fundamental misgivings about the Bureau. Whitehead also accepts uncritically Hoover's explanation about his role in the deportation raids. According to Hoover and Whitehead, Hoover only drafted theoretical legal briefs for Attorney General A. Mitchell Palmer and took no part in the planning and execution of the raids. Documents available to Whitehead in the mid-1950's would have suggested that such an explanation was dubious at best, an outright falsehood at worst.

One can only conclude from this that Whitehead turned his back on such evidence to serve Hoover's political needs.[14] It is filled with misrepresentations and the selective use of evidence. None of this, however, prevented The FBI Story from becoming an instant bestseller. Several years later, an equally successful motion picture, based on the book, was produced.[15]

Since The FBI Story bore the Bureau's stamp of approval, its publication did not end lingering doubts that the FBI had seriously abused its authority. The 1960's gave rise to a new wave of criticism. In 1963 historians William Preston, Jr., Donald Johnson, and Stanley Cohen published books that were to some degree critical of the Bureau's role in the post-World War I Red Scare. Of the three, William Preston's Aliens and Dissenters focuses most directly on FBI operations, especially the deportation raids of 1920. Using previously classified Labor and Justice Department documents, Preston clearly demonstrates that Hoover was the primary architect of the Justice Department's deportations strategy. But since Preston did not have access to many other FBI investigative files, he was unable to pursue leads that suggested that political surveillance was much more pervasive and systematic than anyone had presumed. Preston, for instance, found that as head of the Bureau's General Intelligence Division, Hoover had asked Military Intelligence and the State Department to search their files for any derogatory information about Assistant Secretary of Labor Louis F. Post. As the Department official in charge of the administration of the deportation laws, Post had freed many of the radical aliens

arrested by the Bureau, thereby scuttling Hoover's deportations strategy.[16]

Johnson in Challenge to American Freedoms (1963) and Cohen in A. Mitchell Palmer: Politician (1963) also link Hoover to the planning and execution of the raids. In an important chapter on the reform of the Justice Department and the FBI in 1924, Johnson details the events leading up to the resignation of Attorney General Harry Daugherty and Bureau director William Burns and the appointment of Harlan Fiske Stone as Attorney General and J. Edgar Hoover as FBI director. But like Preston, neither author was allowed access to pertinent FBI materials. As a result, the books offer no further insight into the extent of FBI political surveillance activities during the early post-war period.[17]

In 1964, Fred J. Cook, an investigative reporter for The Nation, updated Lowenthal's book in his study The FBI Nobody Knows. Drawing on materials collected by The Nation's editor, Carey McWilliams, Cook contributed valuable new information about an FBI investigation of Senator Burton K. Wheeler, an insurgent Democrat from Montana, who had pursued an investigation into the Harding scandals. Cook also documented FBI investigations of its critics and other political dissidents during the Cold War era. But on the whole, The FBI Nobody Knows is little more than a general, though well-written, account of events already examined by Lowenthal.[18]

In 1971, after FBI documents revealing Bureau infiltration of the "New Left" were stolen from the FBI field office in Media, Pennsylvania and distributed to journalists and others, the Committee for Public Justice sponsored a conference to discuss FBI political surveillance. The Committee extended an invitation to Hoover to deliver an address to the conference. Hoover declined the offer, opting instead to send a long letter defending the Bureau's counterintelligence activities. Hoover, of course, denied that the FBI had ever conducted politically-motivated, non-criminal investigations. The conference papers were published in Investigating the FBI, edited by Stephen Gillers and Pat Watters. But with the exception of a history of the FBI written by Harvard legal scholar Vern Countryman, the book focused on FBI activities since the Second World War, offering little new insight into the Bureau's early history.[19]

In 1975, following Hoover's death in 1972 and the Watergate scandals, the U.S. Senate appointed a select committee to study intelligence activities. As noted above, the committee staff decided to focus almost exclusively on FBI activities from 1936 through the mid-1970's. Following this investigation and the passage of amendments to the FOIA, several comprehensive histories of the FBI have been published. Of these, Athan Theoharis's Spying on Americans and Frank Donner's Age of Surveillance are the most complete accounts. They also offer two distinctly different explanations for the development of FBI political surveillance activities. Theoharis, who served as a

consultant to the Church Committee, contends that illegal FBI activities such as the Bureau Counterintelligence Program (COINTELPRO), warrantless wiretapping and search and seizure, and its custodial detention plan are the result of the consolidation of executive power during the Cold War years. Prior to this period, he argues, FBI abuses were ad hoc, and were limited to the years between 1917 and 1924. While conceding in several footnotes that the FBI did engage in political surveillance between 1924 and 1936, Theoharis contends that the FBI did not undertake widespread surveillance until Franklin Roosevelt rescinded the Department ban on these activities. Theoharis further suggests that prior to 1936 Congress would have checked any attempt by the executive to amend Department policy and that this was enough to persuade FBI director Hoover and others not to violate Stone's order. During the late 1940's and early 1950's, the Cold War tipped this institutional balance in favor of the Executive, allowing internal security bureaucrats to develop and implement policies without first consulting with Congress: "[T]he Cold War encouraged a strong elite-dominated government with authority to make decisions and the gradual acceptance of the need for secrecy and uncritical deference to so-called national security claims." [20]

Theoharis finds that liberals and conservatives equally share the responsibility for this development. Liberals lost their nerve and enthusiastically embraced the anti-communist dogma that made security claims particularly persuasive. At the same time, conservatives, who had traditionally favored

decentralized government, limited executive authority, and, however qualified, support for individual civil liberties, "came to reject these conservative principles, particularly in the 'national security' area. Success in the fight against communism at home and abroad required centralized power, repudiating legal/constitutional constraints, rejecting moral values, and deference to the executive branch." [21]

In The Age of Surveillance, Frank Donner rejects the idea that FBI intelligence abuses are simply the result of the Cold War. While agreeing with Theoharis that the Bureau's internal security responsibilities grew exponentially during the 1950's and 1960's, Donner argues that illegal FBI political surveillance is rooted in the contradictions of the American political economy. Intelligence agencies protect a conservative capitalist economic and political order from criticism that is otherwise protected by the U.S. Constitution:

To a far greater extent than in other Western democracies (the United States) has asserted superiority over socialism by insisting that it alone can guarantee political freedom. But the political freedom that legitimates the economic system poses a threat to the stability of the political order, indeed, a mounting threat in view of the ever increasing dependence of capitalism on state intervention and subsidy. Given such an alliance between the government and the wealthy and powerful, how can the government enjoy mass support and the loyalty of all classes? How can it avoid the emergence of political options that offer alternatives to capitalism? The need for political socialization within the confines of the economic system - a need once served by the media, the family, schools, and private associations - has become a major responsibility of the government, and in particular its

political intelligence institutions.[22]

Intelligence agency interference in the political process, Donner notes, is legitimated by their pursuit of the "menace". Over the years different groups and political parties have played the part of this security scapegoat. At the beginning of the twentieth century, the Industrial Workers of the World (IWW) and the anarchists were cast in this role. Following the Bolshevik Revolution, the Communist Party supplanted the Wobblies as the clear and present danger to American security. During the 1960's, the New Left replaced the Communist bogeyman. And most recently, alarms are sounded about the threat of "international terrorism." Thus illegal FBI surveillance of lawful political activities is not the product of the dramatic institutional and political changes that have marked the Cold War years, but rather is the consequence of "American obsession with subversive conspiracies of all kinds," the anti-communist "kulturkampf," and the needs of corporate capitalism. While Donner traces the history of FBI security investigations from the beginning of the First World War, he, like Theoharis and others, emphasizes the post-World War II era. And with the exception of his important theoretical contribution, Donner offers little new insight into the pre-1940 period.[23]

This dissertation hopes to complement the work of Theoharis, Donner, and others and examine FBI political surveillance activities prior to the Second World War. The first chapter will focus on the events leading up to the Attorney General's decision



to create the FBI, the Congressional debate that followed, and the Bureau's early investigative activities. Chapter II concentrates on the emergence of the Bureau's internal security investigations from 1913 through 1918. Chapter III is a case study of the deportation raids of 1920 in New Hampshire and examines Bureau activities on the state and local level during the First Red Scare. Chapter IV outlines the Bureau reaction to criticism of the deportation raids and examines its investigations of the emerging civil liberties movement. Chapter V focuses on attempts to limit FBI surveillance through the courts and Congress, and Bureau activities during the Harding-Daugherty-Burns era. The chapter concludes with an examination of Attorney General Harlan Fiske Stone's 1924 directive prohibiting non-criminal, politically motivated investigations. Chapter VI examines FBI political surveillance in violation of the Stone order, Bureau dissembling, and Bureau activities during the first Roosevelt administration. Chapter VII examines FBI administrative reform from 1920 through the late 1930's and the transformation of the Bureau's public image during these years. Chapter VIII looks at President Franklin Roosevelt's 1936 and 1939 directives authorizing Bureau political surveillance, and FBI security investigations from 1936 through 1941. It also examines the implementation of the Bureau's custodial detention program and wiretapping policies, and the Congressional response to these developments.

\* \* \* \* \*

This study is based, in large part, on FBI files in the possession of the National Archives and obtained through the Freedom of Information Act. In September 1977, as a result of President Richard Nixon's 1972 executive order requiring the declassification of federal agency files, the National Archives acquired FBI investigative records compiled from 1908 through 1922.[24] The microfilmed files are broken down into the following categories: 1) Miscellaneous (Misc.); 2) Mexican (Mex.); 3) Old German (O.G.); 4) Bureau Section (B.S.). Miscellaneous files include records of Bureau investigations of violations of the anti-trust and banking laws, some Mann Act cases, and other investigative activities prior to the First World War. Mexican files include records relating to the investigation of Mexican radicals in the United States and Mexico and violation of the Neutrality laws during the border troubles, 1912-1918. Old German files includes records compiled during the war and through the Red Scare. Bureau Section files were compiled from 1920 through 1922 and include records of BI political surveillance. Most of these records cover the years after 1917. Bureau investigations of the IWW which began as early as 1912-1913, for example, are not indexed prior to 1918. Consequently, many of these records are not easily retrieved. After 1918, however, the Bureau's records are carefully indexed and most are readily accessible. There are, however, important exceptions. Many of the more sensitive files concerning the investigation of federal judges, congressmen, cabinet members, and other prominent individuals are missing from the microfilm

collection. These records were presumably destroyed or refiled sometime before June 1943. No reference is made as to why this action was taken. In addition, a fifth category, called "the confidential file", is not included in the Archives collection. This file included records referring to individuals such as Harry Winterger, an attorney for the anarchists Emma Goldman and Alexander Berkman, Senator Robert LaFollette, Assistant Secretary of Labor Louis Post, and Ramon DeValera, and organizations such as the American Federation of Labor, the IWW, and the National Association for the Advancement of Colored People.[25] Nevertheless, Bureau records of the investigations of some prominent and many other less-prominent individuals and organizations are more or less complete, allowing the historian to examine Bureau surveillance activities at the local level and evaluate its impact on the lives of average men and women. While these records offer a unique opportunity to study "working-class life and culture," no attempt will be made here to examine this subject in a comprehensive fashion. To do this subject justice would require another entire volume. One purpose of this thesis, however, is to stimulate interest and research on this topic. I can only hope that my footnotes will provide a detailed, though incomplete, guide for those historians who wish to pursue this and related topics.[26]

FBI files acquired through the FOIA constitute a second important primary source. In August 1978 I submitted an extensive FOIA request, asking for Bureau records on the activities of 26 organizations and 36 individuals. Copies of

correspondence relating to this request can be found in the appendix. To date, we received files on 7 individuals and 8 organizations. The remainder of the request waits to be processed, as a result of prohibitive reproduction fees and the failure of the Justice Department to process my fee waiver request expeditiously. That FBI files, some over 50 years old, are not in the possession of the National Archives, unlike those of other federal agencies such as the State and Defense Departments, is a dilemma that awaits resolution. Massive declassification of records, especially those relating to non-criminal surveillance, compiled between 1923 and 1941, is required if the history of Bureau activities during this period is to be more thoroughly examined. Obviously, then, this study barely scratches the surface of this subject. It does however suggest important new avenues of inquiry. Whether these avenues will remain open is problematical. The Reagan Administration says that it wants to get the government off the backs of the people." Yet at the same time, it has proposed to gut the FOIA, the main barrier against illegal government surveillance. Only through the independent inspection of federal files, especially those of the intelligence agencies, can Americans hope to preserve and protect political rights against official interference. As Justice Louis Brandeis observed: "Experience should teach us to be most on guard to protect liberty when the government's purpose is beneficial. . . The greatest dangers to liberty lurk in the insidious encroachment of men of zeal, well-meaning, but without understanding." [27]

## NOTES

1) Athan Theoharis, Spying on Americans: Political Surveillance From Hoover to the Huston Plan (Philadelphia, 1978), 40-43. "Should the FBI Purge Its Files?," USA Today (November 1978), 48-50. Frank Donner, The Age of Surveillance: The Aims and Methods of America's Political Intelligence System (New York, 1980), 148-150, 162-169; Caroline Ross and Ken Lawrence, Jr., Edgar Hoover's Detention Plan: The Politics of Repression, 1939-1976 (Philadelphia, 1978), 20-21. The FBI is not, however, without its defenders. In his book, Domestic Intelligence (Austin, 1980), Richard E. Morgan claims that the index was composed solely of "persons (both aliens and citizens) who were considered, on the basis of intelligence information, so dangerous that their arrest might be necessary in a home-front emergency." (emphasis added) Domestic Intelligence, 34. Morgan and the FBI would be hard pressed to explain how and why a U.S. congressman was "dangerous." Morgan simply chooses to ignore this evidence in making his argument.

2) See chapters I, V, and VIII, infra.

3) Jerold Auerbach, Labor and Liberty: The LaFollette Committee and the New Deal (Indianapolis, 1966), 97; Thomas E. May, Constitutional History of England (Boston, 1864), vol.II,

275-281; E.P. Thompson, The Making of the English Working Class (New York, 1963), 472-602. See also, William Preston, Jr., "In Security's Name," The Progressive, 43 (May 1979), 55-56. David Montgomery, Workers' Control in America: Studies in the History of Work, Technology, and Labor Struggles (Cambridge, 1979), 158-161.

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8) Donner, Age of Surveillance, 111; Carey McWilliams, The Education of Carey McWilliams (New York, 1978), 148, 215.

9) Paul Murphy, The Meaning of Free Speech: First Amendment Freedoms From Wilson to FDR (Greenwich, 1972), 69.

10) Compare the findings in Iowenthal, FBI with those of the Church Committee. See especially, IARA, SDSR. Iowenthal, FBI, 465.

11) Ibid., 3-13. See chapter I, infra.

12) Eon Whitehead, The FBI Story: A Report to the American People (New York, 1956).

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14) Ibid., 17-25, 46-53. See, e.g., National Popular Government League, To the American People: Report Upon the Illegal Practices of the United States Department of Justice (Washington, D.C., 1920), 40.

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16) William Preston, Jr., Aliens and Dissenters: Federal Suppressor of Radicals, 1903-1933 (Cambridge, 1963), 208-237.

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20) Thecharis, Spying on Americans; Derner, Age of Surveillance; Morton Halperin, et al., The Lawless State: The Crimes of the United States Intelligence Agencies (New York, 1976); Sanford Ungar, FBI (Boston, 1976); David Wise, The American Police State (New York, 1976).

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24) FBI investigative Files, 1908-1922, Record Group 65, National Archives, Washington, D.C. See Christine Marwick, ed., Litigation Under the Federal Freedom of Information Act (Washington, 1978), 67-93, for an explanation of the declassification orders.

25) See index to FBI investigative files, 1908-1922.



26) See Icrin Lee Cary, "The Bureau of Investigation and Radicalism in Toledo, Ohio, 1918-1920," Labor History, 21(Summer 1980), 430-440.

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## Chapter I

### The Origins and Early Activities of the Bureau of Investigation, 1870-1913

The Federal Bureau of Investigation is a stepchild of American progressivism. Originating in 1908 in the Justice Department as the Bureau of Investigation (BI) it signified a reformist effort to control and limit effectively the federal government's investigative activities, while, at the same time, meet the challenges of modern law enforcement. Histories of the Bureau have obscured or ignored the origins of the agency, perhaps for polemical reasons. The subject is important, however, since one can find here echoes of the controversies which later surrounded the FBI. This chapter will reexamine the disparate roots of the agency, the debate in Congress surrounding its creation, and notable early concerns such as the enforcement of the Mann Act and its investigations of federal judges.[1]

In a sense, the FBI originated in the tensions and conflicts of the Civil War - Reconstruction era. In 1870, Congress created the Department of Justice as part of a major reorganization of federal legal activities. The necessitating factor was the significant increase in war-related litigation forced upon the

established departments (State, War, and Treasury). By the late 1860's Congress was faced with their demands for authority to hire solicitors and form their own law offices. In response, Senator Lyman Trumbull (Rep., Ill.) and Representative Thomas A. Jenkes (Rep., R.I) introduced legislation to establish a department of justice. Supporters of the idea claimed that it would eliminate duplication, increase efficiency, and allow the federal government to speak with one voice in important legal matters. Since Congress was already busy with other pressing matters, including the impeachment of President Andrew Johnson, the committees responsible for the legislation did not report out a final proposal for some time. When the bill finally reached the floor for debate, however, opposition to the measure "was largely perfunctory." On June 22, 1870, President Ulysses S. Grant signed the legislation, and, on July 1, the Justice Department "came into formal existence." [2]

In Justice, Congress envisioned "a law department equal to the present emergencies of the law business of the day." The new department would be headed by the attorney general (a cabinet member since 1790), who was given sweeping powers to prosecute violations of the law, to represent the government in civil suits and to assist the President and other federal officials to carry out their duties. The Solicitor General, a post created by the same law, was authorized to represent the government before the Supreme Court and to advise the federal judiciary on the law. Congress also required the attorney general to draft rules and regulations for the "management and distribution of (the

department's) powers." [3]

Of all of the department's responsibilities, the "enforcement acts" were its most controversial. Designed to give effect to the 14th and 15th Amendments, the new laws empowered federal officials to prevent intimidation of white carpetbaggers and newly-enfranchised blacks. At first, the new Attorney General, Amos T. Ackerman, a former Confederate officer who had enthusiastically embraced Republican politics after the war, sought vigorously to suppress violence and vigilantism in the South. As complaints of Ku Klux Klan and related activities mounted, adequate investigations became increasingly problematic. In 1871, Ackerman suggested that "(t)he law would better be enforced if the Attorney General had the authority to employ persons to learn the facts, gather testimony and prefer charges." Congress appropriated \$50,000 (renewable annually in amounts required to satisfy the department's needs) for investigative purposes.[5] The department initially authorized U.S. Attorneys to hire "special agents", called "special deputy marshalls", for record-keeping purposes and to assist their offices in criminal investigations. The special agents were usually detectives or skilled examiners borrowed from the Treasury Department's Secret Service Division.[4]

Like other federal Reconstruction programs, the Justice Department's investigations experienced some initial success but then waned due to local resistance, the lack of the necessary resources, and declining interest among Northern Republicans in

the plight of the freedmen. In 1877, when the last of the federal troops were withdrawn from the South, enforcement of the civil rights laws came to an end.[5]

The Justice Department's activities during Reconstruction, particularly its use of professional detectives to enforce unpopular laws, left a bitter legacy. Many white Southerners saw these federal officials as agents of repression and tyranny, and for the next several decades, Southern congressmen would have blocked any move to give the Justice Department the authority to hire full-time detectives. Summing up this widespread feeling, Representative James M. Beck (Dem., Ky.) declared that the Attorney General had sent "secret-service thieves all over the land - to Alabama, Louisiana, South Carolina, and elsewhere - for the purposes of wrong and oppression. I repeat, it is a Department of injustice instead of Justice." [6]

Mistrust of professional detectives, however, was not limited to the post-Reconstruction South. Historically, Americans have identified official investigations with governmental abuse and corruption. Frank Donner notes: "The use by governments of political spies was regarded with revulsion by the founders of the Republic, long familiar with such abuses both in antiquity and in the contemporary practices of George III. The planting of informers in protest groups and movements was associated in the minds of the founders with the offense of seditious libel, the key instrument of repression in the eighteenth century." Throughout the nineteenth century, and into

the twentieth, many Americans looked contemptuously upon the development of European secret police systems, especially those in France, Russia, and Ireland. Thus, it was believed that spies, secret service operatives, and their informers were unsavory characters who willfully violated individual rights, and ultimately undermined community trust and faith in democratic institutions.[7]

Early Attorneys General shared this aversion to the establishment of a national police force, and repeatedly refused to employ professional investigators on a full-time basis. Instead, they followed Akerman's lead and continued to borrow agents from the Treasury Department. On occasion, the Justice Department hired employees of the Pinkerton Detective Agency on a part-time basis, but following the Homestead riots in July 1892, Congress forbade the use of Pinkerton's in any official capacity. Following this restriction on department hiring practices, the Attorney General authorized U.S. Attorneys to resume borrowing investigators from Treasury "from time to time as needed." Summing up department policy in 1882, Attorney General Benjamin Brewster wrote: "I have always been adverse to appointing and paying detectives and I have always disposed of them and dismissed them (as soon as possible)." [8]

Department policy changed radically during Theodore Roosevelt's second administration. Roosevelt, more than any of his predecessors, used his office to promote social and economic change. The Sherman Anti-Trust Act (1890) was an important part

of this campaign. The Sherman Act aimed at curbing the power of large corporations and restoring free trade and competition. Consequently, the Justice Department, like many other federal agencies, assumed a more active posture. With the President's approval, the Justice Department used the Sherman Act to bring suit against some of the largest corporations and combines. The department also tried to enforce federal banking law more vigorously and prosecute violations of land laws.[9]

In 1906 Roosevelt appointed his Secretary of the Navy, Charles E. B. Bonaparte, attorney general. Bonaparte, a Baltimore attorney, had served in the administration for almost four years as a member of the Board of Indian Commissioners. He had also been a special prosecutor in charge of investigations of corruption in the U.S. Post Office and of land fraud in the Indian Territory (Oklahoma). Roosevelt once told Bonaparte that "you represent the principles for which I stand." In December 1906, Congress approved the nomination, just as the administration's anti-trust campaign shifted into high gear. In November, the government had brought suit against Standard Oil Company as a combination in restraint of trade. Soon thereafter investigations were initiated of the Union Pacific and the New York, New Haven and Hartford railroads, and trusts in the area of tobacco, powder, and turpentine and naval stores.[10]

The new Attorney General quickly realized that in order to manage these complex investigations effectively, the department would have to be reorganized. In the 1907 Annual Report of the

Attorney General, he introduced his plan to improve and strengthen the investigative capabilities of the Justice Department and requested Congressional approval to establish a division of investigation within the department. The present policy, he reported, was woefully inadequate and no longer fulfilled the department's more rigorous investigative requirements. Because of the steadily increasing caseload and the complexity of the anti-trust and banking laws, many important cases would not receive the attention they deserved. A permanent executive detective force whose operatives were fully trained and familiar with the law, he argued, would be more efficient, reliable and economical, and, consequently, the department would be more effective. Aware that Congress might question his intent, Bonaparte pegged his proposal to the "public interest". Because the President and the federal judiciary regularly consulted the Justice Department while shaping important policies and reaching critical decisions, he maintained that they would reach better, more informed decisions if the Attorney General had access to expert investigative analysis of each particular problem. "(A) Justice Department with no force of permanent police in any capacity under its control," he concluded, "is assuredly not fully equipped for its work." [11]

On January 17, 1908, Bonaparte again brought up the issue of a permanent investigative division while testifying before the House Appropriations Committee. Bonaparte called the Committee's attention to the fact that the Justice Department had been required to rely exclusively on Secret Service employees to



assist U.S. Attorneys in the preparation of civil and criminal cases. The Attorney General complained that the Treasury Department had recently raised the cost of borrowing investigators by over thirty-three percent and recommended that Congress grant the department authority to establish its own division of investigation. Echoing the argument that he had advanced in the recent Report, Bonaparte insisted that such a division would save money and, through increased accountability, be more effective. Understanding Congressional animus toward the centralization of federal investigative authority, Bonaparte reminded the committee that there were inherent dangers in the present policy, problems which to some degree had led to abuses in the past. The Attorney General explained that when the Justice Department borrowed agents from the Secret Service, they remained on the rolls of the Treasury Department, responsible to the chief of Secret Service, thus enabling him to intervene, and even direct Justice Department investigations. "I think the best plan," Bonaparte explained, "would be to have a service of that kind under the control of the Department of Justice, and let it, if necessary, assist other departments in cases of emergencies." [12]

Bonaparte's proposal sparked Congressional interest in the issue and led to an important debate between Congress, the Attorney General, and the President which lasted for more than a year and a half. The discussion focused on how best to manage the government's investigative resources, and addressed three basic questions. First, should Congress continue to allow the

Treasury Department to lend its agents to other federal agencies on an ad hoc basis? If not, would this restriction interfere with the President's constitutional responsibility to enforce the law? And, finally, did the Attorney General have the authority to create a bureau of investigation, as Bonaparte had proposed? Since the Attorney General and the President did not seem to understand each other's position, and at times worked at cross-purposes, the debate was hard to follow. It may help to note that the primary concerns of Congress were to insure the integrity of the appropriations law and to preserve administrative accountability and protect individual rights. At no time did the critics of the administration advance their proposals to protect themselves from possible criminal investigation. That idea, which has been seized upon by several historians, was dreamed up by Roosevelt in a desperate attempt to preserve his prerogatives. Nonetheless, since several congressmen had been indicted and convicted for their participation in a land fraud scheme following a Justice Department investigation several years earlier, Roosevelt's suggestion was titillating, even if it was entirely groundless.[13]

Bonaparte's January 1908 testimony before the House Appropriations Committee brought to the surface some basic concerns about Secret Service activities. For almost five years, rumors had been circulating around Washington that Secret Service chief John E. Wilkie harbored ambitions to become an American "spymaster", modeled after Joseph Fouché, Napoleon's notorious

chief of the French secret police. On January 3, 1904, for example, the Chicago Inter-Ocean had published a report that congressmen, cabinet members and a host of other public officials and private citizens had been investigated by the Secret Service because Wilkie was "not particular about drawing the line between law makers and law breakers." Secret Service counter-espionage activities during the Spanish-American War gave some credibility to the Inter-Ocean report. It was widely recognized at the time that the Secret Service had established a network of operatives and informers in several American and Canadian cities in an effort to undermine a Spanish spy ring. When the war ended however, there were lingering doubts about whether or not Wilkie had dismantled his intelligence apparatus.[14]

On March 3, 1908, during its annual appropriations hearings, the House Appropriations Committee investigated this and reports about abuses stemming from the Secret Service's agent-lending program. The first witness, assistant chief of Secret Service, William H. Moran, admitted that agents had been used indiscriminately in the past. He recounted a case involving a former acting Secretary of the Navy who had borrowed Secret Service agents to spy on an Annapolis midshipman who had run away with a married woman. Secret Service detectives shadowed the young man and his female companion for several days and reported the couple's activities directly to the acting Secretary. The Navy dismissed the midshipman for behavior unbecoming of an officer and evidence gathered by government agents was later used in the divorce proceedings.[15]

Disturbed by the Division's investigations of non-criminal activity, committee members questioned Moran about the legal basis of the lending program. Since the 1880's, Congress had restricted the Secret Service to investigations of violations of the federal currency and counterfeiting laws. In 1901, following the assassination of William McKinley, Congress added protection of the President to the Division's responsibilities.[16] How did the Treasury Department, Representative Walter Smith asked, justify its policy when federal law prohibited investigations of crimes other than those enumerated in the department's appropriations. Moran explained that the Division assumed that the law restricted only the expenditure of department funds and did not prohibit other departments from borrowing Secret Service agents if their salaries and expenses were paid from that department's appropriations. Moran revealed that the Secret Service kept about twenty extra employees on its rolls to lend to other departments but that they were not paid unless their services were required by other departments.[17]

Moran's testimony further angered committee members who felt that the Secret Service had deliberately circumvented the appropriations law. The committee agreed that the growing power and influence of the Secret Service, if left unchecked, constituted a serious threat to democratic institutions. In the Washington, D.C. area alone, the committee discovered that the Secret Service had assigned over 144 agents to other departments over the previous twenty months, but assistant chief Moran was unable to testify as to how many of these assignments involved

legitimate investigations or how many were department inquiries into the private affairs of government employees "who had fallen under suspicions of their superiors." Reprimanding the agency's inability to account for the activities of its employees, the committee declared that "[n]othing more foreign to every principle of republican government could be imagined than the growth and extension of the espionage system in the National Capital." [18]

On April 2, 1908, Attorney General Bonaparte presented the Justice Department's budget request to the Appropriations Committee and repeated his argument for the creation of a division of investigation under the Attorney General's supervision. He testified that investigations would be administered better if Congress clearly established the legality of his proposal. Lines of authority and responsibility would be sharply drawn. Problems that had arisen in the past would not be repeated, he added, "if instead of being obliged to call upon [the Treasury Department] for this service we had a small, a very moderate, service of that kind ourselves." At the time, however, the committee did not give the proposal serious consideration. [19]

About a month later, on May 1, 1908, Congress debated an amendment to the 1909 Sundry Civil Appropriations Act which strictly prohibited the Secret Service from lending its agents to other federal departments or agencies. Proponents of the amendment agreed that investigations were a necessary element of

effective law enforcement. They admitted that Congress should appropriate funds for departments to hire professional investigators, but believed that centralization of the government's investigative authority in the Secret Service was neither necessary or desirable. "There has been an effort once or twice to create a general police system under the Federal Government", Representative John J. Fitzgerald (Dem., N.Y.) argued, warning that if the present "practice be continued. . . then we will have in time a Federal secret police." Representative J. Swaggar Sherley (Dem., Ky.), borrowing from the Attorney General's recent testimony, claimed that if departments needed to hire their own investigators, "they should come to Congress and get authorization from Congress for the employment of this class of men." "I do not believe this country has reached the point", Sherley emphasized, "where it needs. . . supervisor of men's conduct by Government and by Secret Service methods. . . Let the departments come openly. . . (otherwise the departments) are treating congress and its laws with absolute contempt." At no time did the supporters of the restrictive amendment mention the Attorney General's own proposal for the creation of a bureau of investigation. Instead, they focused exclusively on the agent lending issue.[20]

Representative Michael E. Driscoll (Rep., N.Y.), who led opposition to the amendment, thought that law enforcement would be unnecessarily restrictive. But, like the bill's supporters, he ignored the Attorney General's plan. Instead, he argued that proliferation of investigative units within the federal

bureaucracy would eventually frustrate the amendment's primary objective of efficient and economical investigations and executive accountability. "There should not be a secret service bureau in every department. . . .It is economical, it is business-like, it is symmetrical to keep them together. . . .It tends toward economy; it tends toward keeping together the things that have been discovered in this work," he summarized. Another opponent of the amendment, Representative William S. Bennet (Rep., N.Y.) addressed the question of past improprieties and claimed that the Appropriations Committee had overdramatized alleged misconduct. For over thirty years departments had borrowed Secret Service agents and, if Congress had not specifically approved the practice, it certainly knew what was happening and had done nothing to stop it. Secret Service agents had served their country honorably and effectively. In fact, Bennet continued, investigations directed by the Secret Service had netted over \$700,000 in fines in the Southern District of New York alone. "As it is now," he said, "(the departments) can go to this Secret Service Bureau, where they have the best trained men in the United States. . . . and take them for a day or two, pay them out of their appropriations, and let them go back to their own employment. It only means twenty men a year. It is a very small item, and it. . . .absolutely protects the proceedings of the different departments of government." With the issues clearly outlined, the amendment received bipartisan support and was overwhelmingly approved by both houses.[21]

On July 1, 1908, Attorney General Bonaparte quietly hired full-time investigators for the department's exclusive use, thus creating the Bureau of Investigation. Although some have accused the Attorney General of bad faith since he took his action while Congress was in recess and only a month after the appropriations bill prohibiting agent-lending went into effect, it is unlikely Bonaparte had deliberately tried to undermine the intent of the appropriations measure. After all, Congress had not formally ruled on the Attorney General's request and had only prohibited the Treasury Department from lending agents to other federal agencies. In his 1908 Report of the Attorney General, filed the following year, Bonaparte officially informed Congress of his decision. The prohibition on the use of Treasury agents, Bonaparte wrote, necessitated the organization of "a small force of special agents of its own." The special agents reported directly to the department's chief examiner. Bonaparte also sought to assuage Congressional fears that the Bureau might, in time, evolve into an independent agency, beyond effective department control. He reported that "the Attorney General knows, or ought to know, at all times what they are doing and at what cost. Under these circumstances he might be held justly responsible for the efficiency and economy of the service rendered." In view of the administration's anti-trust drive, Bonaparte concluded that "such a force is, under modern conditions, absolutely indispensable to the proper discharge of the duties of the department." [22]



It is not clear that President Roosevelt supported his Attorney General's position. Although it seems logical that he would have, Roosevelt's remarks on the subject offer no evidence that he had indeed endorsed Bonaparte's plan. On December 8, 1908, in his annual message to Congress, the President excoriated Congress for adopting the amendment limiting the use of Secret Service agents. Without mentioning that Congress had not prevented the Justice Department from hiring its own investigators, Roosevelt accused it of approving the amendment for "the purpose of diminishing the effectiveness of the war against crime." Roosevelt recalled that in 1905, following a Secret Service investigation, Senator John H. Mitchell and Representative John N. Williamson, both of Oregon, were successfully prosecuted for land fraud. "The chief argument in favor of this amendment," the President insinuated, "was that Congressmen themselves did not wish to be investigated." The message ignored the fact that the amendment only required the Treasury Department to use its investigators in the manner prescribed by law and that Congress had not tried to prevent the Executive Branch from investigating violations of the law. By intentionally personalizing the issue, he impugned the integrity of individual representatives who opposed the agent-lending policies.[23]

The Presidential message was intended to put Congress on the defensive was forcing it to explain why it had acted without regard to Roosevelt's conception of public interest. The message elicited an immediate response. On December 16, the Senate

passed a resolution authorizing the Appropriations Committee to make an investigation into the charges. The following day, the House approved a resolution requesting the President to "transmit any evidence upon which he had based his statements" that Congress had adopted the amendment because congressmen feared investigations.[24]

On January 4, 1909 Roosevelt delivered his reply to the House. Having no evidence to prove his allegation, the President tried to gloss over his overblown rhetoric. Employing a more conciliatory approach, the President asserted that his argument had been misinterpreted by overly sensitive, though well-meaning, Congressmen, who, quite appropriately, did not appreciate being called crooked without a fair hearing: "I have made no charges of corruption against Congress nor against any Members of the present House," Roosevelt claimed, "I have always not only deprecated but vigorously resented the practice of indiscriminate attack upon Congress, and indiscriminate condemnation of all Congressmen, wise and unwise, fit and unfit, good and bad alike." He then placed the blame for the amendment on his critics principally Representative James Tawney (Rep., Minn.), Walter I. Smith (Rep., Iowa), Swaggar Sherley, and John Fitzgerald. The President claimed that they had done the nation a great disservice by sponsoring a bill which hindered the "right of the Government to detect criminals and punish crime." Roosevelt also showed contempt for the congressmen's fear about the growth of a spy system. Newspaper reports exaggerated abuses or had reported the facts completely out of context. He concluded that there "is

no more foolish outcry." If the ban on the use of Secret Service agents continued, millions of dollars in fines would go uncollected and many criminals would go unpunished. In his opinion, the greatest threat was not widespread, illegal surveillance of citizens and their elected representatives, but that a crime wave would soon plague the Republic. The present administration had no other objective than to ferret out the law breakers and the Secret Service, Roosevelt argued, "is by far the most efficient instrument possible to use against crime." [25]

Four days later, on January 8, the House rejected the President's broad indictment as well as his partiality toward the Secret Service, and, in effect, endorsed Bonaparte's decision to establish the Bureau of Investigation. Representative James Tawney, chairman of the Appropriations Committee, argued that the restriction placed on the Secret Service had not impaired the government's investigative capabilities. Attorney General Bonaparte and Secretary of the Interior James R. Garfield, the two cabinet members who had addressed the issue during the Committee's hearings, agreed that they preferred not to be dependent on the Secret Service, that the system was inefficient, and that the Division's examiners were not always qualified to investigate crimes other than violations of the currency and banking laws. Garfield, like Bonaparte, testified that the department would be more adequately served by a force of investigators trained specifically for Interior's work. Implying that Congress was only fulfilling the administration's wishes, Tawney asked how the President could take a position which had

been refuted in sworn testimony by his own advisers.[26]

Representative Sherley defended Congress' authority to restrict the use of Secret Service agents, explaining that the amendment's intent was consistent with established federal policies. The Secret Service could not be allowed to ignore the law any longer, Sherley added, asserting that few issues addressed by the Sixtieth Congress would have the potential impact on individual rights as an endorsement of unlimited executive authority. "When it shall come to the formulation of a new law that shall govern the use of the secret service, I trust this Congress, representing the individual citizens of our country, may as heretofore guard with jealous care the sacred rights of those citizens, and hedge about with all the safeguards essential to the preservation of the people's liberty," he concluded.[27]

Next, Representative Fitzgerald introduced evidence showing that appropriations for federal law enforcement had been increased across the board, thus suggesting that Roosevelt had distorted the truth for political reasons. The underlying question, Fitzgerald reminded his colleagues, was whether or not Congress thought it appropriate to concentrate the federal government's investigative authority in one agency: "It is apparent, moreover, that it has never been the policy to establish a central police or spy system in the Federal Government. Every department has been and is now given ample funds and authority to procure evidence and to detect criminals.

. . The policy has long been followed of separating the work of secret agents of the Government."[28]

Representative Smith summarized the issue. The Attorney General had long had the authority to hire detectives (although he had not exercised his option to do so) and had, without Congressional criticism, already established a division of investigation. "There is no limit whatever upon the power of any department in the selection of its numerous special agents. . . The question now," Smith maintained, "is not should a legal force be created in the Justice Department, but was Congress subject to criticism for destroying at its last session the system which had grown up of using the counterfeiting force in the Treasury Department for miscellaneous purposes." Tawney joined Smith, affirming that the amendment "does not take away from any of the departments of the government the authority they theretofore possessed, nor does it abridge any right of theirs to employ detectives or secret service men. . . Furthermore, this provision leaves every department, available for the payment of such service, all appropriations from which this service has heretofore been paid."[29]

Following the debate, the House adopted a resolution, 212-36, confirming its "utmost confidence in every member of the House Appropriations Committee", thereby rejecting the President's appeal to reconsider the amendment. Soon thereafter, the Senate concurred.[30]

The Senate also recognized the Attorney General's authority to establish the Bureau of Investigation. On February 11, 1909, Senator James M. Femenway (Rep., Ind.), chairman of the Appropriations Committee, concluded that it would be unwise to allow the Secret Service to conduct all of the federal government's investigations. "It has never been the intention of Congress to build up a spy system of that nature." "Congress has made an appropriation for the employment of secret service agents by the Department of Justice. . . . The Department of Justice is the proper place for the employment of secret service agents, as it is the department to which finally all violations of the law must be reported and which must conduct the prosecutions and trials." [31]

Although Congress agreed that the Justice Department should employ full-time investigators, it felt compelled to ask the Attorney General for more specific information about how the department planned to prevent abuses of its investigative authority, and in other words, to succeed where the Treasury Department had failed. Bonaparte appeared before the House Appropriations Committee on February 9, 1909 and outlined his plan to manage the Bureau of Investigation. During the debate, several congressmen questioned whether it would ever be possible to find professional investigators who could be trusted to work honestly, efficiently and within the law. Even Representative Briscoe, one of the administration's staunchest allies, admitted that "a man who is a detective, whose profession it is to discover crime and hunt down criminals, cannot be a man of high

moral ideals. . . (and) can not always be truthful, sincere and honest." Bonaparte shared many of these suspicions and conceded that the department would have to use extreme care before hiring an applicant. He hoped that adequate compensation and job security would attract educated and scrupulous individuals to the Bureau. In previous testimony, Bonaparte revealed that the department planned to eliminate payment on a per-job basis, reducing the possibility that agents would create "the crime in order that he might get credit of detecting and punishing the criminal." Under Bonaparte's direction, the department had adopted a disciplinary code which held agents strictly and personally responsible for any indiscriminate or illegal behavior. "(I)f any ground for reasonable complaint connected with the detective force be found to exist," Bonaparte testified, "he shall be justly called to account." [32]

According to Bonaparte's scheme, the Attorney General would be responsible for the Bureau's administration. Bonaparte told the committee that he had kept abreast of the Bureau's activities by reading daily summaries of field reports that were prepared by the chief examiner, though he characterized the task as "a bore". Nevertheless, the Attorney General had to be aware of the status of ongoing investigations in case complaints were filed against the Bureau, thus enabling him to answer any questions the President or Congress might pose on the subject. [33]

The centralization of bureaucratic responsibility troubled Representative Sherley. The Bureau could become too efficient and place greater emphasis on results than upon the protection of individual rights, especially if all of the Bureau's power flowed from the top: "The idea that some of us (in Congress) have in mind is, how to safeguard an instrumentality, which, in the past history of the world, has been used for oppression and the continuation in power of men having the instrumentality at their command, so as to prevent such abuses in the future." While no human institution could be made entirely risk-free, Bonaparte reminded Sherley, Constitutional checks and balances would prevent one person or group from monopolizing the department's investigative authority. If the Attorney General failed to limit the Bureau to investigations of specific crimes and make it "mind its own business", Congress and the courts could intercede. If necessary, Congress could pass legislation prohibiting the Bureau from undertaking specific types of investigations, providing for criminal and civil penalties if employees deliberately violated the prohibition. Asked whether the Bureau should be allowed to investigate allegations of official corruption, Bonaparte replied: "I can only go on record here as very earnestly protesting any limitation of the detective forces of Government as something which must tend directly to the benefit of the lawbreakers and the criminals." [34]

The Attorney General did endorse limitations on two specific types of investigations. The Bureau, he testified, should not be used for political purposes or to investigate an individual's



political beliefs and affiliations, and should not be allowed to investigate strictly personal matters and private affairs. He concluded: "I think. . . any limitations that would prevent the use of secret service agents for political purposes, or for any purpose that is clearly outside of their legitimate work would be a perfectly proper limitation." [35]

While the Attorney General recognized the power of the Congress to investigate any matter relating to the expenditure of federal funds, the confidential nature of the Bureau's work raised several serious questions.. In certain circumstances, the right of Congress to investigate Bureau activities and the obligation of the President and the Attorney General to enforce the law, could come into conflict. Representative Fitzgerald asked Bonaparte what would happen if Congress subpoenaed evidence from the Attorney General concerning Bureau investigations and the President simply refused to comply with the order, claiming "executive privilege." The only alternative, Bonaparte replied, would be to institute impeachment proceedings against the President for contempt of Congress. Bonaparte added later that he did not anticipate the possibility that his guidelines would fail so miserably as to precipitate a serious Constitutional crisis. "I believe that any abuses in the use of this force which have the slightest reason to suppose to arise, will be fully safeguarded against by the suggestions I have made." [36]

The Appropriations Committee, convinced that the Attorney General's program adequately protected individual rights against any government subversion, recommended full funding for the Bureau. The committee proposed no restrictions on Bureau investigations, but reminded Bonaparte that Congress reserved the authority to withhold any future appropriations if problems in the Bureau's administration arose.[37]

In March 1909, less than four weeks after Bonaparte's testimony, George Wickersham became William Howard Taft's attorney general. Wickersham shared Bonaparte's conviction the Justice Department needed its own investigators and re-organized the Bureau, appointing chief examiner Stanley W. Finch to the new position of "chief of the Bureau of investigation." Finch was in charge of approximately twenty "special agents", fifty naturalization examiners, seven land fraud investigators and twelve general examiners. In an effort to prevent jurisdictional conflicts, Wickersham established rules governing interdepartmental co-operation. The Bureau could share information and assist other agencies provided no expenditure was required. The guidelines also prohibited Bureau involvement in investigations "specifically assigned by law to federal agencies." "Through frequent detailed reports regarding the operations of the employees of this bureau," Wickersham reported, "I am also constantly kept informed of the progress of investigations." [38]

In addition to its anti-trust work, the Bureau investigated violations of bankruptcy, banking and bucket-shop (i.e., dishonest brokerage houses) laws, statutes prohibiting the interstate transportation of obscene materials, the Chinese exclusion law and federal internal revenue, land and customs regulations. Finding the work of the Bureau indispensable to effective law enforcement, Wickersham reported to Congress that: "the experience of the past year has demonstrated the wisdom of having in this department a force of skilled investigators, who are available at all times for the collection of evidence necessary in order to properly enforce the law." [39]

In June 1910, a major new responsibility was added. On November 24, 1909, Representative James R. Mann (Rep., Ill.) introduced a bill into the House which called for the prohibition of the interstate transportation of women "for immoral purposes". In proposing the measure, Mann claimed that the federal government "is the only authority strong enough to cope with this evil". Based on his conclusions of an investigation by U.S. Attorney E.W. Simms, Mann asserted that "most of these girls are enticed away from their homes in the country to large cities. The police power exercised by the State and municipal governments is inadequate to prevent this - particularly when girls are enticed from one State to another." Several Southern Democrats on the House Committee on Interstate and Foreign Commerce initially opposed the bill because it carried with it the onus of increasing federal authority at the expense of that of the states. Representative William Richardson of Alabama declared:

"If the bill becomes a law there will be no limits to which the federal government might not go in regulating the morals and health of a sovereign State." Despite the appeal of Richardson's view to many congressmen, it attracted little support, primarily because most legislators believed that "white slavery" was a national problem which should be addressed by the federal government. On June 23, 1910, the Senate approved legislation passed by the House in January, and the following day, the President signed the bill into law.[40]

The Mann act had an immediate impact on the BI since it was the federal agency authorized to enforce the new law. In 1911 the Bureau of Investigation established a separate branch, headquartered in Baltimore, to investigate violations of the "white slave" law. In April 1912 Attorney General Wickersham named Chief Finch special commissioner in charge of these cases, and appointed Bruce Bielaski, a former Secret Service agent, chief of the Bureau. By 1912, the Bureau was expending more funds on white slave cases than on any other general investigative category, with the exception of anti-trust investigations (\$31,449 to \$47,279). The following fiscal year, the Bureau spent more than twice as much on Mann Act investigations than on anti-trust cases (\$59,639 to \$28,700), clearly illustrating the Bureau's new priorities.[41]

And this was just the beginning. During the 1913 appropriations hearings, the Bureau requested \$200,000 for the suppression of white slave traffic, more than twice the 1913

expenditure. In an effort to justify the enormous increase, Finch painted a frightening picture of the white-slave menace: "In many of the cases the methods followed by purveyors are hideous in the extreme, and when this work was undertaken by the department, the business of procuring girls for the purpose of prostitution was getting to be one of the greatest dangers in this country. In fact, it might almost be said that unless a girl was actually confined in a room and guarded - owing to the clever devices of these white slave traffickers - there was no girl, regardless of her station in life, who was altogether safe." According to Finch, the white slavers procured a woman through fraud, duress and, in some instances, kidnapping, and then corraled their victims into houses guarded by thugs and bullies to prevent their escape.[42]

Although FBI files in the National Archives do not include many of the records of the Mann Act investigations, it is possible to describe, in general, the investigative methods employed by the Bureau. By 1913, the Bureau had targeted certain cities and towns in 20 states and had established contacts with local officials who shared the department's interest in suppressing prostitution. Motivated more out of personal conviction than possible compensation, these assistants gathered information about "every prostitute in every public house of ill fame." Some left cards threatening supposed violators of white slave and peonage laws. They also hired madams to "spy on other madams", and recruited younger women as informers. Bureau agents reciprocated and assisted local officials to enforce state white

slave, pandering and pimping laws. Special Commissioner Finch predicted that the arrangement would reduce, and possibly eliminate, violations of the Mann Act.[43]

Finch's 1913 testimony focused on the suppression of large-scale and highly organized prostitution rings, but the Bureau also investigated the private affairs of consenting adults, promoting themselves to a kind of "moral police". In Johnson v. U.S., the U.S. Court of Appeals upheld the department's broad interpretation and application of the Mann Act to include prosecution of men who "transported" women across state lines for the purpose "of fornication and adultery". On October 12, 1912 Chicago police arrested Jack Johnson, heavyweight champion of the world, on charges that he had abducted Lucille Cameron, a 19 year-old white woman from Minneapolis, Minnesota, and had taken her to his Chicago home. U.S. Attorney James Wilkerson ordered an investigation to determine if Johnson had violated the Mann Act. On October 27, 1912, Attorney General Wickersham, in a memo to Wilkerson, offered federal assistance in "any further investigation against Jack Johnson, the negro pugilist, should it be charged that he violated the Mann white slave act." On October 31, following Cameron's refusal to implicate Johnson, a federal grand jury failed to indict Johnson in the Cameron case. Two days later, however, another grand jury investigating a separate incident indicted Johnson, charging him with transporting Belle Schrieber of Pittsburgh "from that city to Chicago for immoral purposes and causing her to be known as 'Mrs. Johnson.'" While the

prosecution claimed that Johnson gave Schrieber the money to pay for her frequent trips to visit him from Pittsburgh, Johnson denied the accusation. Johnson testified during the trial that he had merely loaned Schrieber the money so that she could "fix up her flat" and "keep her going till she could get a job as a stenographer again." On May 13, 1913, the jury announced that it agreed with the prosecution and convicted Johnson on several counts of violating the Mann act.[44]

Thus, through careful manipulation of public opinion and the exaggeration of the "white slave" problem, EI chief Finch increased the Bureau's authority dramatically. No longer simply involved in the mundane investigations of banking and anti-trust laws, the Bureau could now cast its nets into the murky waters of sexual habits. Not only did the size and the budget of the Bureau double in response to the threat of promiscuous sex, but for the first time the EI was authorized "to dig up the private scandals of men" and to assist the Justice Department to prosecute selectively individuals whose personal behavior did not conform to official definitions of morality.[45]

The point was quickly tested. In July 1913 federal district court judge Emory Speer accused the Justice Department of regularly spying on members of the federal judiciary. The accusations touched off a controversy between Congress and the executive over access to EI investigative files. In early 1913 the Justice Department had received numerous complaints about Speer's behavior on the bench, including claims that the judge

had purposely postponed action in a case pending in his court, bullied witnesses and litigants, and rarely allowed the jury to reach a verdict contrary to his wishes. When Speer learned that the Justice Department was investigating these charges, he immediately claimed that the department was attempting to intimidate him and limit the freedom of the judiciary.[46]

The Justice Department should have had little trouble refuting Speer's general accusations, but an earlier investigation of United States Commerce Court judge Robert W. Archbald lent some credibility to the charges. On February 12, 1912, in a memorandum to President William Taft, Interstate Commerce Commissioner Balthasar H. Meyer accused Archbald of using his office for personal gain. Litigants in cases pending in the Commerce Court were given special consideration if they concluded favorable deals with Archbald and his business partners. On March 31, 1911, Archbald had arranged the purchase of the Katydid culm dump in Moosic, Pennsylvania for himself and his partner, Edward J. Williams, from the Hillside Coal and Iron Company. Archbald and Williams planned to resell the property for a substantial profit. Archbald promised to help the Erie Railroad Company, sole owner of the Hillside Co., to a favorable settlement in a pending case in the Commerce Court. In another case, on October 1, 1911, Archbald persuaded the Lehigh Valley Coal Company, a subsidiary of the Lehigh Valley Railroad, to lease the Packer No. 3 culm dump in Shenendoah, Pennsylvania to himself and his associates. The Packer No. 3 contained approximately 470,000 tons of coal which the Archbald group



agreed to ship exclusively over the lines of the Lehigh Valley Railroad. At the time, the railroad was a party to two suits pending in the Commerce Court.[47]

On February 13, Taft instructed Attorney General Wickersham to investigate Meyer's charges and to appoint one of his agents to write a report detailing all evidence against Archbald for possible use in impeachment hearings. Wickersham assigned Whisley Brown, special investigator and assistant to the Attorney General, to the case. A month later, Brown submitted his report, concluding that although he was not entirely convinced of Archbald's guilt, "the testimony and documentary proofs are sufficient to establish a course of action on the part of the judge that is so violently abhorrent to the judicial proprieties as to discredit his fitness to remain on the Commerce Court." [48]

On May 3, Taft forwarded the Brown report to the House Judiciary Committee, and on July 7, the full House approved thirteen articles of impeachment against Archbald. On December 3, 1912, the Senate trial began, and for only the ninth time, the Senate sat as a high court of impeachment. The Senate heard testimony for about four weeks, and on January 13, 1913, it found Archbald guilty on five of the thirteen counts. The Senate took a further step and declared that Archbald was "unqualified forever for any office of honor, trust or profit under the United States." [49]

In this context, the Senate responded cautiously to Speer's accusation by sponsoring a resolution offered by Senator John D. Works (De., Cal.) which instructed Attorney General James McReynolds "to inform what inspectors or other agents are appointed by him or his department to investigate and report upon the conduct of proceedings of any of the courts or judges of the country. . . under what law they are appointed, what instructions are given them, (and) any rules and regulations under which they act." A month later, McReynolds stiffly replied. He informed the Senate that specific information concerning instructions given field agents, the names of agents involved in specific investigations or "(t)o state with particularity" the courts or judges currently under investigation "would be incompatible with the public interest." McReynolds asserted that the authority to examine the behavior of federal judges derived from the President's constitutional mandate to "take care that the laws be faithfully executed. . . It is impossible for him successfully to discharge this obligation unless the judges whom he appoints are faithful to the trust imposed upon them." He concluded that the suggestion that the Justice Department systematically spied upon the federal judiciary was "entirely without foundation". The department had investigated only three judges over the past five years, and then only after the department had determined that there was sufficient cause to initiate an inquiry.[50]

The Senate was not pleased. Works, joined by George Norris (Rep., Neb.) and William Borah (Rep., Idaho), called the Attorney General's report completely inadequate and an "evasion of the questions." The integrity and independence of the judiciary, the dissenters agreed, was indispensable to constitutional government, and any attempt by the executive to influence judicial decision-making would seriously undermine public trust in the concept of equal justice. Evidence collected secretly, whether it be innuendo or fact, by the Justice Department constituted a particularly insidious threat to judicial independence. The results of such an investigation, said Works, should be made public immediately following the completion of the investigation. Norris argued that balancing the need to enforce the law and at the same time protect public officials from unwarranted investigation and harassment was particularly difficult in cases involving judges: "I do not believe when we do legislate, if we legislate on this subject, we ought to go so far as to prevent the Department of Justice from making investigations. . . . But I believe if such an investigation is made the judge ought to have benefit of it and the country ought to have benefit of it." While agreeing that any potential threat to the judiciary's independence should be taken seriously, Senators George Sutherland (Rep., Utah) and LeBaron E. Colt (Rep., Mass.) defended the administration's handling of the Speer and Archbald inquiries. Investigations of official corruption were necessary Colt declared, and there was no evidence that the Justice Department had ever tried to use information developed in

the course of these inquiries to influence judicial decisions. The Attorney General had acted within his authority to order investigations of judicial conduct and those investigations had proceeded in an appropriately discrete manner. Persuaded by Cclt's and Sutherland's arguments, the Senate dropped the matter without further discussion, postponing resolution of the constitutional questions of executive privilege and confidentiality and Congress' right to know. [51]

Although many vital constitutional questions concerning the BI's investigative authority were raised between 1908 and 1913, Congress and the executive failed to resolve any of them. The first Congressional debates over the establishment of a Bureau of Investigation clearly indicate that, while it was concerned that the power to investigate could quite easily become the power to intimidate, Congress did not, for example, consider a legislative charter for the BI to delimit the Bureau's investigative authority. In 1909 there was little reason to believe, with the exception of some vague, undefined fear of bureaucratic aggrandizement, that Congress could not control the Bureau through its appropriations authority. The legislators assumed that the assurances that it had exacted from Attorney General Bonaparte would prevent possible abuses and, if questions of possible improprieties were raised, Congress could suspend the department's appropriations until the matter was satisfactorily resolved.

The Sixtieth Congress (1907-1908) also demonstrated an overriding concern to strike a balance between order and liberty when it considered the Attorney General's decision to create the BI. Without Bonaparte's assurance that the activities of the Bureau would be closely monitored by the Attorney General himself and that the Bureau never would be allowed to become a quasi-independent agency, it is unlikely that Congress would have appropriated the funds for the Justice Department to hire full-time, professional detectives. Once given these assurances, Congress believed that future problems, should any arise, could be solved within the context of this informal arrangement. Nevertheless, the plan failed because Congress and Attorney General Bonaparte did not anticipate the dramatic increase of executive authority during the next decade. Nor did they realize that labor conflict and total war would pose these questions in much more serious terms.

## NOTES

1) See especially Max Lowenthal, FBI (New York, 1950); Don Whitehead, The FBI Story: A Report to the American People (New York, 1956); Fred J. Cook, The FBI Nobody Knows (London, 1964). Histories of the FBI that were published in the late 1970's and in 1980 are, more balanced than earlier books, in part because Hoover had been dead for several years and the Senate had just conducted a thorough investigation of FBI domestic intelligence operations. Nevertheless, none of these books has carefully examined the origins of the Bureau. See especially, Sanford Ungar, FBI (Boston, 1976); Athan Theoharis, Spying on American (Philadelphia, 1978); Frank Donner, Age of Surveillance (New York, 1980).

2) Morton Keller, Affairs of State: Public Life in the Late Nineteenth Century (Cambridge, 1977), 104-105; Homer Cummings and Carl McFarland, Federal Justice: Chapters in the History of Justice and the Federal Executive (New York, 1970), 218-229.

3) Keller, Affairs of State, 104-105; Cummings and McFarland, Federal Justice, 223-229.

4) Cummings and McFarland, Federal Justice, 230-249; 373.  
Keller, Affairs of State, 105.

5) Cummings and McFarland, Federal Justice, 245-249;  
"Inflation of the Attorney General," The Nation 19 (October 1,  
1874), 214-215;

6) Cummings and McFarland, Federal Justice, 248.

7) Derner, Age of Surveillance, 30-31; See also, Thomas E.  
May, Constitutional History of England (New York, 1899), v.II,  
112; Zechariah Chafee, Jr., Free Speech in the United States  
(Cambridge, 1941), 215-218, 472-473; Aryeh Neier, "Mouchards and  
Provocateurs," The Nation, 231 (September 13, 1980), 221-223;  
Lowenthal, FFI, 4. See also E.P. Thompson, The Making of the  
English Working Class (New York, 1966), 61-62, 82-83, 114,  
484-505; Richard E. Morgan, Domestic Intelligence: Monitoring  
Dissent in America (Austin, 1980), 15-17.

8) J.E. Horan, The Pinkertons: The Detective Dynasty That  
Made History (N.Y., 1967); James J. Kakalik and Sorrel  
Wildhorn, The Private Police: Security and Danger (New York,  
1977), 67; 27 Stat. 368 and 591, August 5, 1892 and March 3,  
1893; Cummings and McFarland, Federal Justice, 373.

9) William T. Letwin, Law and Economic Policy: Evolution  
of the Sherman Anti-Trust Act (New York, 1963), 244-247; George  
Mowry, The Era of Theodore Roosevelt and the Birth of Modern  
America (New York, 1954), 6-15.

10) Cummings and McFarland, Federal Justice, 375-78; Joseph Bishop, Charles Joseph Bonaparte. His Life and His Public Service (New York, 1922).

11) Annual Report of the Attorney General, 1907 (Washington, D.C., 1908), 3.

12) 43 Congressional Record (January 8, 1909), 662; House Appropriation Committee, Hearings, Emergency Appropriations Bill (January 18, 1908).

13) Even though Roosevelt quickly backtracked because he had no evidence to prove his assertion, Richard G. Fowers, in his 1975 article "J. Edgar Hoover and the Detective Hero," repeats the claim that Congress passed the amendment to prevent investigations of members' allegedly criminal activities. See Journal of Popular Culture, 9(Fall 1975), 261-264; note 23, infra.

14) 43 Congressional Record (January 4, 1909), 462-63; 43 Congressional Record (January 8, 1909), 655-57; Rhodri Jeffreys-Jones, American Espionage: From Secret Service to CIA (New York, 1977), 16-41.

15) 42 Congressional Record (May 1, 1908), 5556; 43 Congressional Record (January 8, 1909), 655-57;

16) 42 Congressional Record (May 1, 1908), 5557-58; 43 Congressional Record (January 8, 1909), 672-74. (January 8, 1909), 672-74.



17) 42 Congressional Record (May 1, 1908), 5557; 43 Congressional Record (January 8, 1909), 655-56.

18) 43 Congressional Record (January 8, 1909), 655.

19) 43 Congressional Record (January 8, 1909), 662.

20) 42 Congressional Record (May 1, 1908), 5558.

21) 42 Congressional Record (May 1, 1908), 5558.

22) Annual Report of the Attorney General, 1908 (Washington, D.C., 1909), 7.

23) 43 Congressional Record (January 4, 1909), 458-464. In their study of the Justice Department, Cummings and McFarland first advanced the thesis that the amendment to the appropriations act was passed to prohibit the Attorney General from establishing a bureau of investigation, not simply to prevent the Treasury Department from lending its agents to other agencies. "Congress responded (to the report) by depriving the Department of Justice of the use of any secret service operatives borrowed from the Treasury!" Federal Justice, 376-77. Don Whitehead, in his semi-official history of the FBI, The FBI Story: A Report to the American People (1956) echoed the Cummings-McFarland argument: "The Roosevelt Administration's use of Secret Service agents in the clean-up campaign came under attack (after members of Congress were indicted for land fraud). . . Congress pointedly ignored Bonaparte's plea, although the need for investigative work within the Justice Department (was

pressing). . . The (amendment to the appropriations act) was a crippling blow to federal law enforcement." Most recently, Richard E. Morgan claims that "(i)n 1908 President Theodore Roosevelt proposed the creation of a bureau of investigation within the Justice Department. The immediate precipitant was neither labor unrest nor the activity of radicals and terrorists. Instead the impetus came from corruption within Congress." Domestic Intelligence, 24. Prominent critics of the FBI, notably Max Lowenthal and Fred J. Cook, quoting selectively from the Congressional debate over Secret Service and Justice Department policies with respect to criminal investigations, conclude that Congress expressly prohibited the establishment of the BI. Congress, they assert, balked at prohibiting Bcraparte's decision creating the Bureau because they would have played into Roosevelt's hand and strengthened his case against Congress in this matter. See Max Lowenthal The Federal Bureau of Investigation (New York, 1950); Fred J. Cook, The FBI Nobody Knows (London, 1964), 49-55.

24) 43 Congressional Record (January 8, 1909), 660-63.

25) 43 Congressional Record (January 4, 1909), 458-62.

26) 43 Congressional Record (June 8, 1909), 663-64.

27) 43 Congressional Record (January 8, 1909), 671. Representative Sherely added the "(i)n my reading of history I recall no instance where a government perished because of the absence of a secret police force, but many there are that

perished as a result of the spy system. If Anglo-Saxon civilization stands for anything, it is for a government where the humblest citizen is safeguarded against the secret activities of the government. It stands as a protest against a government of men and for a government of law." 43 Congressional Record (January 8, 1909), 663-65, 671.

28) Ibid., 678-79.

29) Ibid., 661, 672.

30) Ibid., 683.

31) 43 Congressional Record (February 11, 1909), 2181-94.

32) House Appropriations Committee, Hearings, Sundry Civil Appropriations Act for 1910, 779; 43 Congressional Record (February 25, 1909), 3121; House Appropriations Committee, Memo Relating to the Secret Service, 60th Cong. 1st Sess. (1909), 150.

33) Memo Relating to the Secret Service, 129-30, 161-63.

34) Ibid., 149-153.

35) Ibid., 149-153.

36) Ibid., 156-57.

37) Ibid., 156-157.

38) Annual Report of the Attorney General, 1910 (Washington, D.C., 1911), 6, 26; Max Lowenthal, FBI, 10-13; Don Whitehead, The FBI Story, 20-21;

39) Report of the Attorney General, 6, 26.

40) Lowenthal, FBI, 11-13; Whitehead, The FBI Story, 23-25.

41) House Appropriations Committee, Hearings, Sundry Civil Appropriations Act for 1913, 1486; Hearings, Sundry Civil Appropriations Act for 1914, 888.

42) Hearings, Sundry Civil Appropriations Act for 1914, 874-75.

43) Ibid., 876-77.

44) Johnson v. U.S., 215 Fed. 679 (1913); New York Times, October 19, 1912, 4; October 27, 1912, 11; November 2, 1912, 1; May 14, 1913, 1; May 30, 1913, 4.

45) Quoted from a speech delivered by Representative Sherley (May 1, 1908) when he first opposed the agent lending policies of the Treasury Department. 42 Congressional Record, 5558. In 1950, Max Lowenthal asserted that as a result of the Mann Act, the FBI "possesses the power the Sixtieth Congress of 1908 feared it might acquire. It now possesses, actually or potentially, the materials referred to years before by the Attorney General Bonaparte when he conceded the impropriety 'of the use of a detective force. . .for the ascertainment of mere matters of scandal.' His concession was no longer applicable; after the law

of 1910, ascertainment of such matters fell legally within the power of the EI." Lowenthal, FBI, 21.

46) New York Times, February 28, 1913, 3; June 15, 1913, II, 8; EI Misc. file 700. The Bureau's files concerning the Speer investigation are missing from the Archives collection.

47) Senate Document 1140, "Impeachment of Robert W. Archbald", 62rd Cong. 2d Sess. (1912), 1804-22.

48) Ibid., 1825-46.

49) New York Times, July 8, 1912; December 1, 1912, 8; December 4, 1912, 3; January 14, 1913, 1.

50) 50 Congressional Record (July 7, 1913), 2339; (August 7, 1913), 3166.

51) 50 Congressional Record (August 7, 1913), 3166-69.

## Chapter II

### Political Ideas Become Crimes:

#### Anti-Radical Investigations, 1913-1919

When President Woodrow Wilson asked Congress to declare war on Germany and her allies on April 2, 1917, he noted that the battle would not be limited to the fields of Europe. America, the President emphasized, must be prepared to fight a war at home against "a lawless and malignant few" who were "against our national unity of counsel, our peace within and without, our industries and our commerce." Disloyalty, Wilson warned, would be "dealt with with a firm hand of stern repression." As a result of this domestic struggle against subversion, the the Justice Department's Bureau of Investigation underwent profound and, arguably, permanent changes. For the next sixty years, the Bureau would, in varying degrees, focus its investigative attention on a wide range of lawful political activities in the United States. In short, the Wilson administration laid the foundation for a permanent state surveillance apparatus during the First World War.[1]

Since historians have long understood the important relationship between the fear of foreign subversion and the growth of domestic political surveillance, it is usually presumed that the Justice Department first ordered the BI to conduct intelligence investigations on the eve of the First World War. While the Bureau assumed extensive security responsibilities only after President Wilson warned the public about "German intrigues", it had investigated the causes of labor strife in the West as early as 1912 and the activities of radical Mexican emigres during the Mexican Revolution. Thus, rather than introducing the BI to political surveillance, American involvement in the First World War brought these peripheral functions to the fore. And since no labor organization was more radical or militant than the Industrial Workers of the World, the Wobblies were the first group to be investigated by the BI for political reasons.[ 2 ]

Toward the end of the Taft administration, western state political and business leaders clamored for the federal government to play a more active role in the struggle against militant labor unions, primarily the Industrial Workers of the World (IWW). The IWW was founded in 1905 by leaders of the Western Miners Union to organize unskilled workers and farm laborers, groups that had been consistently ignored by the conservative, trade-oriented American Federation of Labor (AFL). The IWW's philosophy was a mixture of ideas borrowed from Marx, Darwin, the French anarcho-syndicalists, and utopian socialist. Its goal was to represent all workers in "one big union." The

Wobblies were unabashedly radical and much of their rhetoric was outrageous and inflammatory: "The working class and the employing class have nothing in common. There can be no peace so long as hunger and want are found among millions of working people and the few, who make up the employing class, have all the good things of life. . . Between these two classes a struggle must go on until the workers of the world organize as a class, take possession of the earth and the machinery of production and abolish the wage system. . . It is the historic mission of the working class to do away with capitalism." The union's only allegiance was to the worker. Wobblies berated clergymen as "long-haired preachers" who were apoloquists of the system, offering only "pie in the sky when you die." Wobblies regarded nationalism and patriotism preposterous. In their war against "wage slavery", no strategy was unthinkable. Early on, the IWW relied on "Free Speech" campaigns to encourage workers to support the organization. Although many believed these campaigns were nothing more than obnoxious propaganda blitzes, the Wobblies asserted that the right to advocate strikes, boycotts, slowdowns, and even industrial sabotage, were constitutionally protected. Few establishment political and labor leaders agreed with this position. The Socialist Party, for example, approved a measure prohibiting party members from advocating violence, crime, or sabotage.[3]

In California, where many of the "Free Speech" campaigns were conducted, the response was visceral. For five months in late 1911 and early 1912, vigilantes and supporters of the IWW



battled in the streets of San Diego. On the surface, San Diego appeared to be an unlikely battleground. A small city of 50,000, San Diego had no serious labor troubles, either in the industrial or agricultural sectors. In addition very few Wobblies were in the area, no more than a few hundred at any one time. Still, as the journalist Walter V. Woelke noted at the time, the Wobblies were able to goad "the authorities and the populace into a hysterical frenzy, into an epidemic of unreasoning fear and brutal rage, into a condition of lawlessness so pronounced that travelers feared to visit the city." In December 1911 the San Diego city council closed down several blocks in the downtown area that had "served as a sort of Hyde Park Speakers' Corner." The council's ruling sparked often violent clashes between IWW members and others who belonged to the San Diego Free Speech League and the police and vigilantes. "Hanging is too good for [Wobblies]", the editor of the San Diego Tribune proclaimed, "and they would be much better dead, for they are absolutely useless in the human economy." [4]

When reports of official complicity in vigilante terror attracted nationwide attention, California state officials moved to end the fighting. In an effort to obtain an even-handed evaluation of the facts concerning the situation in San Diego, Governor Hiram Johnson, a prominent progressive, commissioned special investigator Harris Weinstock to conduct a thorough inquiry. Weinstock, who spent months in San Diego collecting evidence, told the Governor that he found it hard to believe that he was in the United States and not Czarist Russia. Official and

unofficial repression of the IWW, he concluded, was worse than he had imagined. He recommended that the state take no additional steps to suppress the IWW.[5]

Wounded by the Johnson administration, conservative leaders appealed directly to President William H. Taft for federal assistance. Representatives of the anti-IWW forces informed Taft that the Wobblies were planning to "create a new government in Southern California" and "invade Mexico." They urged the President to prosecute IWW leaders under a federal law which prohibited seditious conspiracy. Taft ordered Attorney General George Wickersham to investigate these allegations. Southern California, the President claimed, "is a basis for most of the anarchists and industrial world workers, and for all the lawless flotsam and jetsam that proximity to the Mexican border thrusts into those two cities of San Diego and Los Angeles." Governor Johnson and the state government, he continued, do not "hesitate to do (business) with these people and cultivate their goodwill," and for that reason, the federal government must "come in and show the strong hand of the United States in a marked way so that they shall understand that we are on the job." [6]

The Attorney General assigned several FBI agents to investigate IWW activities in Southern California to determine if federal indictments were warranted. Following an exhaustive inquiry, assistant attorney general William E. Harr reported that because the IWW had violated no federal laws, there was nothing the Justice Department could do to help the beleaguered

California businessmen. Without the state legislature's prior approval, the President could not commit federal troops to the region and such a request was not forthcoming. The Immigration act of 1903 allowed the Labor Department to deport anarchists from the United States, but such proceedings had to occur within three years after the immigrant had entered the United States. Therefore, the deportation of large numbers of IWW agitators was unlikely.[7]

Successful prosecution of Webbs under section 6 of the Federal Penal Code was equally unpromising. Passed in 1861, section 6 prohibited two or more persons from conspiring to overthrow the government, interfering with federal law enforcement, or seizing government property. The BI had uncovered no evidence that showed that the IWW had conspired to overthrow the U.S. government by force and violence. As a result, Harr concluded that the IWW would remain a problem that state and local governments would have to manage without federal assistance.[8]

A second BI investigation of the California IWW followed a protracted and sometimes violent strike against fruit and vegetable growers, ending in the so-called "Wheatland Riot." Led by IWW organizers, nearly three thousand migrant workers protested against the miserable working conditions, low wages, and inadequate food and housing at a hop ranch in Wheatland, California owned by E.B. Durst. Labor Department analyst Stuart Jamieson referred to the August 1913 riot as a "purely

spontaneous uprising. . . a psychological protest against factory conditions of hop picking." [9]

Shaken by yet another demonstration of IWW "lawlessness", and fearing additional spontaneous strikes during the harvest seasons, Durst and other growers organized the Farmers' Protective League to represent their interests in the state legislature. The League also hired an army of private police to guard fields and intimidate farm workers.

Governor Johnson abandoned the position he had taken during the San Diego Free Speech campaigns a year earlier. He sided with the Wheatland growers and ordered the California Commission on Immigration to investigate conditions on the large farms. The purpose of the inquiry was to help the Governor formulate labor policies which would improve working conditions and undercut the IWW appeal. At the same time, Johnson joined with the governors of Oregon, Washington, and Utah in an appeal for federal assistance. In a letter to Interior Secretary Franklin Lane, the governors urged the federal government "to get to the bottom of [the IWW] movement." The region was "experiencing abnormal disorder and incendiarism." Expressly blaming the IWW for these conditions, the governors conceded that state and local officials were nearly helpless to control or apprehend the "ringleaders." President Wilson responded sympathetically to the governors' request, advising Attorney General Thomas W. Gregory that he "wholeheartedly endorsed 'this inquiry which seems to mean so much to the whole section that it concerns.'" [10]

Gregory assigned EI agents to conduct an examination of evidence compiled by the California Immigration Commission. As in the earlier investigation, the BI failed to identify any IWW activities which might have violated federal law. The agent in charge of this investigation did characterize IWW members as "chiefly panhandlers, without homes, mostly foreigners, the discontented and the unemployed, who were not anxious to work." But to the dismay of the California politicians and their grower allies, federal law did not yet prohibit vagabondage and unemployment. Nevertheless, American nativism lay at the heart of the BI's analysis of the IWW, and would reappear during the war to justify the suppression of the Wobblies.[11]

From these somewhat inauspicious incidents, a procedure for the investigation of domestic radicals had begun to take shape. Propertied interests, allied with various state and local authorities, enlisted the support of federal agencies to handle threats, either real or perceived, to their political power and capital investments. The IWW, because of its bombastic propaganda, and perhaps more importantly, its success in organizing an otherwise prostrate labor force, was the primary target of these early efforts. But since the Wobblies had violated no federal laws, there were no successful federal prosecutions. As William Preston writes: "the exponents of repression envisioned the federal government as a deus ex machina for their difficulties with radicals. Until World War I, however, Washington was equally embarrassed by the lack of laws suitable for the prosecution of dissident members of the

community."[12]

Just as domestic labor unrest led to BI investigations of radical labor organizations prior to 1916, so the threat of foreign subversion during the Mexican Revolution brought about federal surveillance of political activities. During the second decade of the twentieth century, Mexico underwent profound social, economic, and political change. When Woodrow Wilson took office in March 1913, he found the political turmoil in Mexico especially troubling. Two years earlier, Francisco Madero had overthrown Porfirio Diaz. In 1913, Madero, who had championed a modest program based on political reform and land redistribution, was ousted and murdered by General Victoriano Huerta. Believing that U.S. recognition of the Huerta regime would only serve to undermine Mexican constitutionalism, and hoping to teach the Mexicans to choose better leaders, the Wilson administration slowly intensified American pressure against the Huerta government. In April 1914, after Huerta refused repeatedly to satisfy Wilson's demands, American Marines occupied Vera Cruz. During the next two years tensions between the two governments mounted and finally, in 1916, General John Pershing led regular army troops into Mexico to pursue border raiders led by rebel leader Pancho Villa.[13]

Not surprisingly, few Mexicans supported Wilson's policies. Many believed that an American President had no right to interfere in the affairs of Mexico no matter what his objectives might be. That Mexican exiles living in the United States also

criticized his policy particularly irked the President. Already frustrated by Mexican refusal to see things its way, the Wilson administration moved to silence these voices. Members of the Partido Liberal Mexicano (PLM) were among the most vociferous critics of American intervention in the Mexican Revolution. From 1900 through 1910, the PLM, led by Ricardo and Enrique Flores Magón, represented the only serious challenge to the corrupt Díaz regime. Avowed anarchists, the Flores Magón brothers had first fled Mexico in 1903 to avoid police surveillance and harassment. From their St. Louis, Missouri headquarters, they published their newspaper, Regeneración. They advocated the overthrow of Díaz, the eight-hour day, the restriction of the church, land reform. In 1905, the U.S. Ambassador to Mexico, David E. Thompson, reported to the State Department that the "PLM 'worried President Díaz', 'harmed U.S. business interests', and advocated 'anarchism'." By 1913-1914, however, exile had taken its toll on the PLM and thereafter the party enjoyed only peripheral support among the Mexican working class. Still, PLM leaders worked tirelessly from their base in Southern California to develop an alternative political and social program to the more popular Villistas and Carranzistas.[ 14 ]

In 1913, the BI, responding to Wilsonian policy, which was based on the belief that the PLM might somehow undermine the Mexican government, began to investigate the party's political activities. Unlike other Mexicans and Americans, members of the PLM were not involved in running guns or munitions, activities which would have clearly violated the neutrality laws. Instead,

the Bureau investigated party members for criticizing American policy and exhorting their comrades in Mexico to fight for "Land and Liberty." Nonetheless, Bureau agents assumed the worst. In November 1915, for example, special agent E.M. Blanford reported that the PLM had organized "secret societies. . . for the purpose that should the United States intervene in Mexico, are going to do all the damage possible in this country." Blanford found this passage from the PLM's newspaper, Regeneracion, particularly incriminating: "The consequence (of American intervention) can not but be disastrous (for President Wilson). . . it has proved to the world that the 'Bluffer' of the North is only a scarecrow and that the emissaries of the United States are dogs which bark but which can't bite because they have not the teeth which only the stupidity of the people would give them (sic) in consenting to become cannon fodder for the benefit and amusement of their original parasites (sic)."[15]

While the investigative techniques used by the BI to gather evidence against the PLM did not encompass the full array of methods often associated with political intelligence operations, the BI investigation of the Mexican radicals certainly anticipated the more comprehensive examinations of anti-war activists by several years. BI agents placed "mail covers" on the party offices and the homes of party leaders. Letters and packages were intercepted, opened, and inspected without warrants and in violation of federal postal regulations. Informers were hired to procure membership and mailing lists, survey offices and printing facilities, feign radicalism and later betray



confidences. Large files including the PLM's publications and correspondence, were developed and this information was shared with other government agencies, in this case the Post Office. Agents attended lawful political rallies and meetings sponsored by the party and noted the names of the speakers, summarized their speeches, estimated the size of the audience, and recorded the response to the speeches. And for assistance, the Bureau turned to local police officials.[16]

In February 1916, following a two year investigation of their activities, federal postal officials arrested the Flores Magon brothers for violating section 211 of the federal postal penal code. Section 211 prohibited persons from using the mails to distribute materials "tending to incite murder, arson, and assassination." The government alleged that as editors of the PLM's newspaper, Regeneracion, the Flores Magons had incited others to commit arson and murder. Given the widespread hostility toward aliens, especially Mexican radicals, in Southern California, the U.S. Attorney had little trouble convincing a jury that the two men were guilty as charged. In July 1916, a federal judge sentenced Enrique Flores Magon to three years in prison, his brother Ricardo, to one.[17]

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A year earlier, in May 1915, a German submarine had sunk the British passenger liner Lusitania, precipitating a foreign policy crisis much graver than the Mexican Revolution. As did troubles to the south, World War I had serious domestic ramifications.

Diplomatic negotiations only partially resolved the problem related to submarine warfare, and the President decided to support rearmament and military preparedness to insure the nation's security. As part of his preparedness campaign, Wilson singled-out foreign-born Americans who opposed the administration's rearmament policy, claiming that they were pouring "the poison of disloyalty into the very arteries of our national life." In December 1915, Wilson called on Congress to support rearmament and to approve sedition legislation designed to silence these dissenters. Although there was very little hard evidence that any significant number of German- or Irish-Americans were involved in orchestrated attempts to subvert the nation's security, Wilson sounded this shrill alarm: "(T)he gravest threats against our national peace and safety have been uttered within our own borders." Hyphenated Americans guilty of sedition, disloyalty, and anarchy should be "crushed out." Although Congress did not pass legislation to suppress criticism of Wilson's foreign policy until July 1917, the President's Preparedness Campaign encouraged the public to identify foreign-born citizens, socialists and other radicals with subversion and disloyalty, an association that later characterized enforcement of the espionage and sedition acts.[18]

In the early years of the war, before direct American involvement, it was unclear which federal agency would be responsible for enforcing internal security laws, such as the neutrality acts. During the Spanish-American War, the Secret Service had investigated enemy "spy rings" operating in the

United States and Canada, but since 1912, the BI had shared the responsibility for enforcing the neutrality acts. In 1915, Secretary of State William Jennings Bryan turned to the Secret Service to investigate alleged "German intrigues." The legal basis for these inquiries was somewhat obscure because Congress had failed to approve Wilson's initial proposal for sedition legislation. Nevertheless, Secretary of the Treasury William McAdoo cautioned the President not to prohibit Secret Service inquiries simply because of "the lack of federal authority." Wilson agreed that the situation was much too critical to let formalities stand in their way and ordered the Treasury Secretary to supervise the Secret Service's counter-espionage activities.[19]

A bureaucratic struggle between Secretary McAdoo and Attorney General Gregory over control of the administration's internal security program quickly ensued. Although Gregory, a Texas attorney who had joined the cabinet in 1914, strongly supported the President's efforts to secure passage of sedition legislation, he firmly opposed the continued growth of counter espionage responsibilities. For example, he took particular exception to the government's protracted case against German Commercial Attache Heinrich Albert. In August 1915, Secret Service agent Frank Burke illegally seized documents from Albert. The documents outlined plans to spread pro-German propaganda in the United States. In an attempt to prove German perfidy, the Treasury Department later gave the papers to the New York World. The Attorney General, joined in his dissent by BI chief A. Bruce

Bielaski, argued that turning the documents over to the World was counterproductive for two reasons. First, the Justice Department could not prosecute the individuals responsible for the scheme because they had not violated any federal laws. Second, Gregory feared that Wilson's critics, particularly belligerent Republicans such as Theodore Roosevelt, would exploit the incident and claim that the administration was soft on "German intriguers." [20]

The net effect of this incident spurred inter-agency rivalry and further confusion. Attorney General Gregory's argument did not impress the President or other cabinet members. Wilson continued to authorize the Secret Service to conduct non-criminal, intelligence investigations in the United States. In addition, in 1916, Congress adopted an amendment to the appropriations bill authorizing the Bureau of Investigation to conduct investigations at the request of the Secretary of State. Joan Jensen has suggested that Congress approved the amendment to allow the Bureau to investigate an explosion at the Black Tom munitions dump in New York Harbor. It is also possible that the State Department wanted the authority to request BI investigations of foreign, primarily German, diplomats in the United States. In any event, the amendment did not grant the Bureau blanket authority to conduct widespread surveillance of dissident political activities. It did, however, give the Attorney General and the chief of the BI the opportunity to consolidate the department's jurisdiction in internal security matters. [21]

In the spring of 1917, BI chief Bielaski realized that the Bureau was ill-equipped to investigate the rising number of security-related complaints received by the Justice Department. At the beginning of the war, the Bureau fielded only 300 full-time agents, who spent most of their time gathering evidence for anti-trust and Mann Act cases. In 1916, only one out of ten investigations conducted by the Bureau was related to security matters. Moreover, since Congress had not approved Wilson's proposals for sedition legislation, additional appropriations for security work were not forthcoming.[22]

In early February 1917 Albert M. Briggs, a Chicago advertising executive who was disturbed by the government's inability to prevent local pro-German activities, contacted BI Division Superintendent Hinton D. Clabaugh. Briggs informed Clabaugh that he could organize a volunteer association to assist the BI in security-related investigations. Even before receiving permission from Washington to implement the Briggs proposal, Clabaugh had accepted limited assistance from Briggs's associates. Still Clabaugh withheld any final commitment to Briggs pending Bielaski's approval. Several weeks later, as the pace of events leading to war quickened, Briggs offered the BI the use of 75 automobiles. At the time, Bureau agents still had to rely on public transportation. Clabaugh, who had enthusiastically supported Briggs' original proposal, arranged a meeting in Washington between Bielaski and the Chicago executive to discuss the proposal. After conferring with Attorney General Gregory, Bielaski accepted Briggs' offer, provided that the

assistance would not be publicized.[23]

On March 14, Briggs, encouraged by Bielaski's decision, presented a third, more comprehensive proposal to Clabaugh. This plan called for the creation of a nationwide volunteer organization to help the Justice Department protect the nation's security. Financed by membership dues and private contributions, the American Protective League (APL) would recruit "citizens of good moral character. . . . who may be acceptable to your department." Each local APL unit would, at all times, be fully accountable to the Justice Department and "under the direction of the nearest (department) headquarters." Although Clabaugh shared Briggs' enthusiasm for such a program, he lacked the authority to approve the proposal and instead sent it to Bielaski for his consideration.[24]

Six days later, on March 20, the Cabinet unanimously agreed that a state of war between the United States and Germany already existed and advised the President to act accordingly. Attorney General Greecy suggested that his department prepare legislation aimed at controlling German espionage and sabotage activities within the United States. Without discussing the implications of such legislation for individual rights, the President and the cabinet concurred. In this context, Bielaski approved Briggs' plan later that same day. In a telegram notifying Clabaugh of his decision, the BI chief emphasized that the APL should make no arrests without the Bureau's approval "in order that there be no confusion." [25]

Two days later, Briggs met with Bielaski in Washington to iron out the final details. The BI would inform its field offices that Briggs was organizing "a volunteer committee. . . for the purpose of co-operating with the department in securing information of activities of agents of foreign governments or persons unfriendly to this government, for the protection of private property, etc." Bielaski expressed his desire that the AFL's activities remain "as confidential as practicable," but left the rest up to Briggs. The AFL would establish its own rules and regulations, and recruit its own members. If Briggs and Bielaski discussed measures to insure the AFL's accountability to the Justice Department, they took no affirmative action to prevent abuses. Instead, they believed that the Bureau and the AFL would be able to solve any problems should they arise. To say that Bielaski seriously misjudged the situation is an understatement. In fact, Bielaski and Briggs could not have concocted a better formula for lawless law enforcement. By June 1917, a force of over 100,000 volunteers, woefully lacking any legal or police experience had been formed and set loose upon a society already engrossed in war hysteria.[26]

From the start, administration officials believed that the effective suppression of the anti-war left required not only a large police force but also stringent sedition legislation. In 1916, it may be recalled, Congress had refused to approve legislative proposals drafted by the Justice Department which would have prohibited criticism of the Preparedness Campaign and

the administration's foreign policy. At that time, of course, a state of war between the United States and Germany did not exist, and, as a result, the patriotism of the bill's opponents could not be seriously questioned. After Congress declared war on April 2, 1917, it became increasingly difficult for critics of the seditious legislation to challenge the proposal on constitutional grounds alone. In Wilson's address to the joint session of Congress on April 2, he warned that Germany "has filled our unsuspecting communities and even our offices of government with spies and set criminal intrigues everywhere afoot." In framing the question in these terms, Wilson effectively undercut any possible support opponents of the espionage act might have mustered in Congress.[27]

On June 15, 1917, Congress passed an espionage act which included provisions that were sufficiently broad to allow federal prosecution of dissident political activities which were totally unrelated to "espionage". "(T)wo of the twelve titles of the act", Harry Scheiber writes, "bore directly upon freedom of speech." One empowered the Postmaster General to exclude from the mails any material "advocating or urging treason, insurrection, or forcible resistance to any law of the United States." established definitions of espionage:

(1) Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies; (2) and whoever, when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the



United States; (3) or shall willfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States.[28]

Even though the President had privately assured his supporters that the new law would not be used to silence critics, the actual prosecutions tell a decidedly different story. In all, the Justice Department brought charges against over 2,000 individuals for violations of the espionage laws, including former Socialist Party Presidential candidate Eugene Debs and J.A. Petersen, a Republican senatorial candidate from Minnesota. Yet, as John Lord O'Brian, head of the department's War Emergency Division, later suggested: "not one bone fide spy or saboteur was convicted during World War I." [29]

The problem was one of definition and identification. The administration chose to interpret the espionage laws in the broadest possible terms. Wilson and his senior advisors understood that most anti-war critics were not German spies in the strictest sense of the word. They were not planning to steal state secrets and turn them over to German espionage agents. Nor were they saboteurs, who were likely to bomb armories, munitions dumps, or defense plants. Instead, the Justice Department argued that opposition to the war, including even the most innocuous remarks, could theoretically interfere with the war effort, and therefore should be punished. Given this interpretation of the statute, the administration's policy was to intimidate and silence pacifists, radicals, and socialists, but above all, to

destroy militant labor organizations which opposed "Wall Street's war." [30]

There is no more dramatic example of this repression than the federal government's struggle against the IWW, an organization that, according to the President, was "a menace to organized society and 'certainly. . . worthy of being suppressed.'" Since 1914 the IWW had strongly opposed the war. In 1916 the IWW's general executive board declared that "(i)n this mad chaos of bloodshed and slaughter that has engulfed the world, we reaffirm with unfaltering determination the unalterable opposition of all Industrial Workers of the World and its membership to all war and the participation therein of its membership." Following the American declaration of war, the IWW changed this position somewhat. In an attempt to protect itself against federal prosecution, the IWW decided to leave any decision concerning draft registration and conscription up to the individual. "Registration by eligible IWW's ran as high as 95 per cent in some localities," William Preston writes, "and in general most draft-age Wobblies filled out their forms." Having taken this precaution, the IWW refused to equivocate on its anti-war platform. The IWW believed that workers should organize and, if necessary, take direct action in opposing the war. "{y)ou cannot fight the masters," IWW propaganda read, "with the legal weapons they have built for their own protection." Thus, its anti-war activities would include strikes, lock-ins, slowdowns, general strikes, and, if necessary, industrial sabotage. [31]

Wilson administration officials were particularly apprehensive about the IWW threats because of their influence in strategic industries. The IWW had successfully organized workers in the textile industry in the Northeast, miners and lumberjacks in the mid and far west, and agricultural workers in California. Administration officials understood that any serious interruption in any of these industries would have serious consequences. In addition, by 1916, the IWW had reversed a decline begun in 1913 when internal factionalism and falling membership combined with an economic slump to throw the organization into disarray. Realizing the danger posed by a militant and revitalized IWW, federal officials joined forces with industrial and agricultural leaders who had been fighting the IWW for almost a decade. In Aliens and Dissenters, William Preston demonstrates that Western businessmen and their allies in state and local government played a key role in the federal government's decision to undermine the IWW. In the summer of 1917, Western agribusinessmen, worried that the harvest would be disrupted by the IWW, asked the Wilson administration to arrest and intern IWW "ringleaders." These individuals could later be indicted on federal conspiracy charges. "If they were apprehended," the theory went, "their followers would be only scattered, ineffectual individuals." [32]

The plan was particularly appealing to President Wilson but only if the indictments were coupled with reform of the conditions that had led to labor unrest. Soon after the United States entered the war in April 1917, administration officials recognized the need to rationalize labor-management relations,

prevent strikes, preserve industrial peace, and thus insure maximum productivity. Although the administration never developed a comprehensive labor program, the Labor Department did pursue two closely related goals. First, through the War Labor Board, the administration encouraged collective bargaining and forced rapidly anti-union industries to deal with AFL affiliates. The results of this program were impressive; by the end of the war, more than three million workers belonged to unions and were receiving record wages and working fewer hours. Simultaneously, the President's Mediation Commission, assisted by the Justice Department, tried to neutralize radical labor organizations opposing American intervention in the war and advocating fundamental economic and social change. In one stroke, Wilson hoped to realize the twin "progressive" goals of rationalizing labor-management relations in vital industries and routing the radical opposition.[33]

More than than other federal agencies, the Justice Department tced the administration's anti-radical line. As a consequence, in July 1917 the Attorney General intensified the department's investigation of IWW activities throughout the United States. Attorney General Gregory ordered all BI Special-Agents-in-Charge and U.S. Attorneys to collect "all data (about the IWW) which may be useful to the Department in determining what action may be taken under the various criminal statutes against the United States. . .or may be useful to state authorities." The IWW, Gregory asserted, was a "grave menace" financed "by some hostile (presumably German)

organization." Following the receipt of these instructions, the BI "had its agents infiltrate high leadership positions, and corporations were willing to make the reports of their private detective investigations available to U.S. Attorneys." [34]

These extensive investigations failed to uncover any evidence that the IWW had received "German gold" in return for their organizing and anti-war activities. U.S. Attorney William C. Fitts even declared that the IWW "is a matter for the States themselves to control under such laws as they deem proper to enact and enforce." Despite the serious holes in the federal government's case against the IWW, the Attorney General informed the President on August 21 that the Justice Department was ready "to strike against the IWW." [35]

On September 5, 1917, the BI conducted a series of raids against IWW headquarters, union halls, and private homes throughout the country. "Operating under perhaps the broadest search warrants ever issued by the American judiciary," Melvyn Dubofsky writes, "federal agents seized everything they could find: minute books, correspondence, typewriters, desks, rubber bands, (and) paper clips." In Chicago, they took the love letters of Ralph Chapin, the editor of the IWW weekly paper, Solidarity. The documents, which spanned the thirteen years of the organization's existence, did not show that the IWW had participated in any espionage, or espionage-related, activities. [36]

Nevertheless, the raids provided information that allowed the government to prosecute the Wobblies. U.S. Attorneys in Chicago, Sacramento, Wichita, and Omaha persuaded grand juries to indict 166 members of the IWW for violating the Selective Service Act, the Espionage Act, and sections 6 (seditious conspiracy) and 19 (prohibiting activities which interfered with the right of others to exercise their constitutional rights). These indictments leave little doubt that the Justice Department's goal was nothing less than the destruction of the IWW as a viable labor organization. Virtually the entire leadership and many second- and third-line officials were on trial. Initially, the outcome of the proceedings did not disappoint federal prosecutors. In Chicago, where 113 Wobblies stood trial, 35 were sentenced to 5 years in prison, 33 to 10 years, and 15 to 20; in Sacramento, 12 members were sentenced to 10 years, and in Wichita, 26 Wobblies received terms ranging from 1 to 9 years. While these wartime prosecutions seriously disrupted the IWW, by draining important financial resources and slowing recruiting, the government did not feel that it could claim total victory. As U. S. Attorney Fred Robertson told his superiors in April 1919: "The germ of discontent, destruction and outlawry has not yet been exterminated from the IWW." [37]

The campaign of the American Protective League was even less successful. When BI chief Bielaski approved the formation of the organization in March 1917 he believed that such an organization was necessary to prevent German espionage and sabotage of defense industries. Yet in two and a half years, the AFL failed to

capture a single spy or saboteur. Instead, with the administration's blessings, APL operatives spent most of their time investigating, and in many cases harassing, anti-war activists, political radicals, German- and Irish-Americans, and enemy aliens, i.e., German and Austro-Hungarian immigrants who resided in this country but who had not become United States citizens. The APL also tolerated, and in some cases, instigated, mob violence and vigilantism, acts which President Wilson later condemned as unbecoming American democracy. On April 4, 1918, a mob in Collinsville, Illinois dragged Robert Frazer through the streets, wrapped him in an American flag, and later lynched him. Frazer had been accused of talking to others about the "virtues of Socialism" and of planning to blow up a nearby coal mine. The Frazer murder heightened public awareness of the threat of violence and vigilantism, forcing a somewhat reluctant President to issue this statement three and a half months later: "There have been many lynchings, and every one of them has been a blow at the heart of ordered law and humane justice. No man who loves America, no man who really cares for her fate and honor and character, or who is truly loyal to her institutions, can justify mob action while the courts of justice are open." [38]

Despite this and similar pronouncements, the Justice Department and the BI exercised little control over the APL. During the war, Joan Jensen has observed, the BI "strayed so far from its primary function, the investigation of violations of federal laws, that it was difficult now to draw the line. Eielaski had few guidelines for his own operatives. Little

wonder the the APL volunteers who worked with [BI agents] had a tendency to wander off into illegal activities." This conclusion is clearly demonstrated by an analysis of the Justice Department's role in the Slacker Raids of 1918. In early 1918, Wilson's political critics, led by Theodore Roosevelt and Leonard Wood, charged that the administration had failed to enforce effectively the Selective Service laws. They called for increases in military spending and the size of the armed forces. They claimed that the best way to achieve this goal was to round-up the hundreds of thousands of "slackers" who had failed to register for the draft. In June 1918 the War Department added fuel to the fire when it warned the President that a second call would leave the armed forces short of its recruiting goals. The Department advised the President that the problem could be solved if the government took steps to find 300,000 slackers.[39]

In the face of this growing political pressure, Attorney General Gregory and BI chief Bielaski agreed to place greater emphasis on the investigation of violations of the Selective Service laws. And since Bureau agents would be unable to handle the increased caseload, Bielaski asked the APL to assume responsibility for finding and arresting slackers. Both Bielaski and Attorney General Gregory, however, realized that the APL could not legally detain suspects. Up to this time, the Department had (at least officially) limited League members to security-related investigations only. Even BI agents could arrest individuals only on the authority of the Attorney General. When the APL asked the War Department for the authority to arrest



possible draft evaders, Provost Marshall General Encch A. Crowder turned down the request, claiming that it was not within his power to grant such authority to civilians. In an attempt to satisfy minimum legal requirements, Gregory urged APL operatives to turn over suspects who would not voluntarily register for the draft to "the proper State and Federal officer in order that the arrest may be effected in accordance with the law." He also announced that the Justice Department would reimburse both federal agents and APL members "up to fifty dollars for apprehending" deserters and draft evaders. "Soon", Jensen notes, "the whole business became a nasty bounty hunting practice." In July 1918, for example, the government paid rewards totalling almost \$100,000, \$30,000 on one Saturday alone.[40]

Even while the July raids were in progress Wilson's critics pressed for more comprehensive enforcement of the draft laws. The administration responded accordingly. In the course of a three day slacker raiding orgy in Chicago, 10,000 APL members arrested and interrogated over 150,000 suspects. Few stones were left unturned; individuals were grabbed at bus and train terminals, movie theaters, workplaces, ball parks, beaches, parks, and at home. Of these only 1200 were slackers and 265 deserters, that is, less than one per cent of those arrested and held for questioning had violated the selective service laws or military regulations.[41]

Undismayed, the Attorney General authorized the APL to conduct a comprehensive sweep of the New York area, assumed to be the slacker capital of the United States. On Tuesday September 3, the day after Labor Day, the AFL, under the direction of the BI, cast its net over the entire New York metropolitan area. Every person who appeared to be eligible for the draft was questioned, his identification checked, and if his papers were not in order, sent to one of several armories for further interrogation. Like the Chicago raids, persons were apprehended in both public facilities and private residences. In all, almost 75,000 men were detained, some for several days. Later, BI officials admitted that only one out of every two hundred (.5%) persons caught in the AFL's dragnet was a bona fide draft dodger.[42]

The New York raids, unlike those that had transpired earlier that summer, prompted widespread public criticism of the AFL's questionable, if not illegal, tactics. Several New York newspaper agreed that the arrests were "inexcusable" and in "defiance of the spirit of American law." On September 4, only the day after the New York raids had commenced, Congressional Republicans criticized the raids, taking advantage of the opportunity to discredit the administration. Senator Frank B. Brandegee argued that "(i)f this great government is. . .to hunt down lawbreakers it cannot with any consistency assume to act the part of a lawbreaker itself." Hiram Johnson, the California progressive, asked rhetorically: "Where was it that (the slacker raids) occurred? Would you say, if you had not been

advised today, that this thing were even possible in free America?" Senator George Chamberlain's assessment was equally blunt: "I. . .resent. . .any such Prussianism." Chamberlain then asked the Senate to consider investigating the Justice Department, the APL, and their role in the slacker raids.[43]

In response, President Wilson ordered the Attorney General to prepare a report outlining "exactly what were the circumstances of that action, in making arrests of persons charged with being slackers." Attorney General Gregory assigned John Lord O'Brian, a prominent Buffalo, N.Y. Republican who headed the Justice Department's War Emergency Division, to investigate the raids. O'Brian's appointment served a dual purpose. By naming a Progressive Republican, Gregory hoped to diffuse partisan criticism of the administration. And, by choosing a noted civil libertarian, Gregory wanted to demonstrate that the administration was not, as its critics had charged, determined to curb domestic dissent.[44]

O'Brian assured the press that he would examine all of the facts. The primary purpose of the investigation was, he said, to find out "whether persons conducting the raids exceeded their authority, whether there was any abuse of power, whether there was any undue hardship imposed, and what methods were employed in carrying out the [Attorney General's] orders." The inquiry, however, was not as thorough as O'Brian implied. He stayed in New York City for only two days. Without any staff to assist him, O'Brian had to rely on information provided exclusively by

BI agents and examiners and APL operatives. They assured him that the arrests had been made in accordance with state and federal law, that only those who failed to show their draft cards were detained, and that those who were questioned were treated with courtesy and respect. Not surprisingly, C'Brian's final report dismissed many of the charges made by critics of the raids. He assured the Attorney General that the "dragnet method was effective" and that the "Justice Department needed the continued aid of locating these men for the draft." [45]

In the Justice Department's cover letter to the President, Gregory was more reticent. He told Wilson that he would accept full responsibility for the "unlawful and ill-advised. . . use of volunteers and military men by special agents of the BI." "Contrary to my express instructions," Gregory concluded, "instructions which I have repeated over and over again, and contrary to law, certain members of the (BI), without consultation with me or with any law officer of this Department, used soldiers and sailors and certain. . . members (of the APL) in making arrests." Nonetheless, the Attorney General did not categorically denounce the Department's reliance on the APL. Satisfied by the report, Wilson released it to the press on September 12. The action was seen by many as an indication that more raids were to come and several weeks later, the Attorney General approved a request to employ APL units in a series of slacker raids in Washington State. [46]

Individual congressmen condemned the slacker raids and the Justice Department's reliance on APL volunteers to enforce the law. But Congress never formally considered the important questions raised by Bielaski's APL experiment. In fact, many congressmen applauded the work of the APL believing, like many other Americans, that without the League, German spies and saboteurs would be free to collect vital security information and disrupt war-related industries. Given this support and the wartime hysteria, Congress refused to scrutinize closely the investigative activities of the BI, thus insuring that the agency would take future liberties in security's name.[47]

The labor policies pursued by the Wilson Administration during the war practically insured post-war industrial unrest. As noted, the government had, with some success, disrupted radical labor activities. But these organizations, especially the IWW and, later, the Union of Russian Workers, remained influential among foreign-born workers in large-scale industries. One reason for this resilience was the increasing militancy of workers during the early postwar years. Rank-and-file workers were unwilling to surrender gains made during the war even though their prosperity and power depended, in large part, on unprecedented production and labor shortages. No fundamental changes, however, had been made during this period to insure their position vis-a-vis management, which was equally unwilling to seek a compromise. Having sacrificed their right to dictate terms to labor at the government's behest, business leaders looked forward to a quick return to "normal" industrial

relations. Powerful, militant trade unions had no place in this vision of the post-war era. This fundamental conflict made confrontation, labor unrest, and strikes practically inevitable, and, as it had before and during the war, the Justice Department and the BI readily sided with capital. Hence, BI surveillance of radical labor and political organizations did not end with the armistice, but continued well into the post-war years.[48]

Bureau agents throughout the country continued to believe that members of the IWW and similar organizations were "mostly anarchists or those having a strong tendency in that direction, who [oppose] the Constitution of the United States and the present form of government". But their hands were tied. The information that they collected was generally trivial, and the end of the war deprived them of the tools to prosecute. Important provisions of the espionage and seditious acts had either expired or could only be enforced when the nation was at war. Although Justice Department officials and Congress generally agreed that a peacetime seditious act was vital to the nation's security, they were unable to agree on a specific legislative proposal. Hence, only state syndicalist laws passed in late 1918 and 1919, specifically defined impermissible radical activities, and, at the height of the post-war red scare, the Justice Department found this situation intolerable. Radicalism, they believed, was a national problem, one which only the federal government could handle effectively. Their desire for the authority to deal with the radical problem came to end in the fall of 1919 when the new Attorney General, A. Mitchell Palmer,

decided that the BI would coordinate the mass deportation of all radical aliens from the United States.[49]

As it had many other American institutions, World War I changed the Bureau of Investigation. In 1916, the Bureau specialized in the investigation of violations of the anti-trust and white slave laws. Three years later, it was responsible for nothing less than the internal security of the entire nation. Given this enormous expansion of authority in such a short period of time, it is not surprising that Attorney General Bonaparte's original guarantees ultimately failed to prevent BI abuses during and after the war. In order to work effectively, the Bonaparte plan required an assertive and inquisitive Congress, a conscientious attorney general, a shared belief in administrative accountability, and, perhaps most importantly, dispassionate discussion of the issues. In 1919, none of these conditions had been adequately met. The details of this tragedy must now be discussed.[50]

## NOTES

1) Paul Murphy, World War I and the Origins of Civil Liberties in the United States (New York, 1979), 73. See also, Harry Scheiber, The Wilson Administration and Civil Liberties (Ithaca, 1960), 17-19.

2) See especially, Frank J. Donner, The Age of Surveillance: The Aims and Methods of America's Political Intelligence System (New York, 1980), 3-29. See also, Lowenthal, FEI, 22-35; Murphy, World War I and the Origins of Civil Liberties, 32-50; H.C. Petersen and Gilbert C. Fite, Opponents of War, 1917-1918: The Story of the Persecution of Anti-War Groups (Madison, 1957), 3-20. Since the BI's investigative files compiled on IWW activities prior to 1918 are not indexed, I was unable to include these sources in my analysis of these early Bureau investigations. Instead, I have relied on Preston's account which is based upon files in the general Department of Justice records, documents which are also located in the National Archives. See also, Lorrin Lee Cary, "The Bureau of Investigation and Radicalism in Toledo, Ohio: 1918-1920," Labor History, 21 (summer 1980), 430-440.



3) William Preston, Jr., Aliens and Dissenters: Federal Suppression of Radicals, 1903-1933 (Cambridge, 1963), 39-40. See also, Melvyn Dubofsky, We Shall Be All: A History of the IWW (New York, 1969), 57-87; Paul Brissenden, The IWW: A Study of American Syndicalism (New York, 1920), 155-177.

4) Preston, Aliens and Dissenters, 52-53; Dubofsky, We Shall Be All, 189-193; Brissenden, IWW, 260-282.

5) Harris Weinstock, Report to the governor of California on the disturbances in the city and county of San Diego in 1912; quoted in Brissenden, IWW, 266.

6) Preston, Aliens and Dissenters, 54-55. Dubofsky, We Shall Be All, 192-193. Albert Tucker, a Wobblly from Los Angeles who along with several hundred others hopped a freight train to join their brothers in San Diego, gave this account of the violence after the train had been stopped en route by some 400 armed men: "The moon was shining dimly through the clouds and I could see pick handles, ax handles, wagon spokes and every kind of club imaginable swinging from the wrists of all of them while they had their rifles leveled at us. . . the only sign of civilization was a cattle corral. . . We were ordered to unload and we refused. Then they closed in around the flat car which we were on and began clubbing and knocking and pulling men off by their heels, so inside of a half hour they had us all off the train and then bruised and bleeding we were lined up and marched into the cattle corral, where they made us hold our hands up and march around in a crowd for more than an hour. . . They marched

us several times, now and then picking out a man they thought was a leader and giving him an extra beating. Several men were carried out unconscious. . . afterwards there was a lot of our men unaccounted for and never have been heard from since. The vigilantes all wore constable badges and a white handkerchief around their left arms. They were drunk and hollering and cursing the rest of the night. In the morning they took us out four or five at a time and marched us up the track to the county line. . . where we were forced to kiss the flag and then run a gauntlet of 106 men, every one of which was striking at us as hard as they could with their pick ax handles. They broke one man's leg, and everyone was beaten black and blue, and was bleeding from a dozen wounds." Quoted in Dubofsky, We Shall Be All, 192.

7) Preston, Aliens and Dissenters, 53-55.

8) Preston, Aliens and Dissenters, 53-55.

9) Preston, Aliens and Dissenters, 56-57; Dubofsky, We Shall Be All, 294-298.

10) Preston, Aliens and Dissenters, 57-60. Preston suggests that Johnson's decision was consistent with his "progressivism" since Wobblies and other militant workers deserved state protection only if they were "the victims of illegal and vicious mob action." Once the farm workers rioted in Wheatland, Johnson perceived them as criminal conspirators whose action seriously threatened the existing capitalist economic order. Dubofsky

agrees, noting that Johnson and the California Progressives "sought to restrict IWW influence among migrants by reforming work conditions on California's ranches." Dubofsky, We Shall Be All, 298.

11) Preston, Aliens and Dissenters, 59-61; John Higham, Strangers in the Land: Patterns of American Nativism, 1860-1925 (New York, 1966), 131-193.

12) Preston, Aliens and Dissenters, 54; Donner, The Age of Surveillance, 30-32.

13) See generally, Arthur S. Link, Woodrow Wilson and the Progressive Era, 1910-1917 (New York, 1954), on American policy toward Mexico during the first Wilson administration. On the causes of the Mexican revolution, see also, John M. Hart, Anarchism and the Mexican Working Class, 1860-1931 (Austin, 1978), 104-155; Robert Freeman Smith, The United States and Revolutionary Nationalism in Mexico, 1916-1922 (Chicago, 1972), 1-42.

14) Hart, Anarchism and the Mexican Working Class, 87-104; Schieber, The Wilson Administration and Civil Liberties, 11; James R. Mock, Censorship 1917 (Princeton, 1941); Smith, The U.S. and Revolutionary Nationalism, 12-13. Even Arthur Link, Wilson's sympathetic biographer, concludes that "by the end of his administration the United States had hardly a friend left in Mexico." The problem, according to Link, was not Wilson's objectives ("Wilson had a sincere passion to help the struggling

Mexican masses win land and labor."), but his failure to choose the right tactics to implement his policies. For a different interpretation of Wilson's Mexican policies, one which stresses the imperial nature of Wilson's entire foreign policy, see William Appleman Williams, The Tragedy of American Diplomacy (New York, 1972), 69-89. For example, Wilson once told a British diplomat that "I am going to teach the South American republics to elect good men." Undoubtedly former presidents of Ivy League colleges. See also, P. Edward Haley, Revolution and Intervention: Taft and Wilson with Mexico, 1910-1917 (Cambridge, 1970).

15) Blanford report, 11/23/15; Unsigned memorandum, 4/29/16; BI file Mex. 232-56

16) Blanford report, 10/4/15, 10/7/15, 11/5/15, 11/10/15, 11/11/15, 11/15/15, 11/18/15, 11/23/15, 11/26/15, 1/9/16; Blanford to Vann, 10/18/15; Blanford to Bielaski, 11/19/15; Blanford to Earnes, 2/17/16; Neunhoffer report, 10/24/16; Minck report, 8/26/16; BI file Mex. 232-56.

17) Blanford to Batabun, 3/1/16; Blanford report, 6/23/16; Webster report, 6/23/16; BI file Mex. 232-56.

18) Scheiber, Wilson Administration and Civil Liberties, 2-8; Joan Jensen, Price of Vigilance (Chicago, 1969), 9-16.

19) Rhodri Jeffreys-Jones, American Espionage: From Secret Service to CIA (New York, 1977), 16-41; Jensen, Price of Vigilance, 9-16; Scheiber, Wilson Administration and Civil

Liberties, 5-7.

20) Jensen, Price of Vigilance, 13-15.

21) Jensen, Price of Vigilance, 15-16; Donner, Age of Surveillance, 53. SDSR, 378-79.

22) SDSR, 378-79; Jensen, Price of Vigilance, 16-17; House Appropriations Committee, Hearings, Sundry Civil Appropriations Bill for 1916, 762; Carroll Wooddy, The Growth of the Federal Government, 1915-1932 (New York, 1934), 89-93.

23) Jensen, Price of Vigilance, 17-22; Murphy, World War I and the Origins of Civil Liberties, 89-90; SDSR, 380-81.

24) Jensen, Price of Vigilance, 20-21.

25) Jensen, Price of Vigilance, 22-25; SDSR, 381-82; Donner, Age of Surveillance, 32-33; Peterson and Fite, Opponents of War, 18-19.

26) Jensen, Price of Vigilance, 23-25.

27) Murphy, World War I and the Origins of Civil Liberties, 72-83; Scheiber, Wilson Administration and Civil Liberties, 11-19.

28) Scheiber, Wilson Administration and Civil Liberties, 19.

29) John Lord O'Brian, National Security and Individual Freedom (Cambridge, 1955), 128-130.

30) Murphy, World War I and the Origins of Civil Liberties, 92-95, 197-207; When several federal judges ruled that not every disloyal or slanderous remark was actionable under the provisions of the Espionage Act, the Justice Department moved to tighten up the law to include such statements. In May 1918 Congress approved a bill drafted by Department lawyers which amended the Espionage Act. The legislation later became known as the Sedition Act. The act prohibited persons to "willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language" about the United States or its officials. See, Peterson and Fite, Opponents of War, 208-221. Arnon Gutfield, "The Ves Hall Case, Judge Bourquin, and the Sedition Act of 1918," Pacific Historical Review 37(May 1968), 163-78; Bureau reaction to later adverse judicial decisions is examined in David Williams, "The Bureau of Investigation and Its Critics: The Origins of Federal Political Surveillance, 1919-1921," Journal of American History (forthcoming December 1981).

31) Preston, Aliens and Dissenters, 89-91; Dubofsky, We Shall Be All, 349-375; Peterson and Fite, Opponents of War, 43-60.

32) Preston, Aliens and Dissenters, 92, 124-125; Dubofsky, We Shall Be All, 376-397.

33) See James Weinstein, The Corporate Ideal and the Liberal State: 1900-1918 (Boston, 1968), 214-254.

34) Preston, Aliens and Dissenters, 122-125; Dubofsky, We Shall Be All, 404-407.

35) Dubofsky, We Shall Be All, 380-81, 390-405; Preston, Aliens and Dissenters, 124.

36) Dubofsky, We Shall Be All, 405-406; Preston, Aliens and Dissenters, 118-151.

37) Phillip Taft, "The Federal Trials of the IWW," Labor History 3 (Winter 1962), 57-91.

38) Jensen, Price of Vigilance, 223. David Kennedy, Over Here: The First World War and American Society (New York, 1980), 81-83.

39) Jensen, Price of Vigilance, 188-190; Kennedy, Over Here, 150-51.

40) Jensen, Price of Vigilance, 194-195.

41) Jensen, Price of Vigilance, 191-96; Lowenthal, FBI, 24-29; Petersen and Fite, Opponents of War, 231-34.

42) Lowenthal, FBI, 28-29.

43) Jensen, Price of Vigilance, 203-207; Lowenthal, FBI, 32-35.

44) Jensen, Price of Vigilance, 209-210; Lowenthal, FBI, 34-35.

45) Jensen, Price of Vigilance, 209-211; Lowenthal, FBI, 34-35; SDSR, 381-82.

46) Gregory to Wilson, quoted in Jensen, Price of Vigilance,

47) Jensen, Price of Vigilance, 212-218; Lowenthal, FBI, 34-35; Peterson and Fite, Concurrents of War, 232-34.

48) Weinstein, The Corporate Ideal and the Liberal State; Alan Wolfe, The Seamy Side of Democracy: Repression in Modern America (New York, 1973), 24-30; Dubofsky, We Shall Be All, 376-97; Kennedy, Over Here, 267-269;.

49) Robert K. Murray, Red Scare: Study in National Hysteria (Minneapolis, 1955), 82-104; Jerold Auerbach, Unequal Justice: Lawyers and Social Change in Modern America (New York, 1976), 102-107; Stanley Cohen, A. Mitchell Palmer: Politician (New York, 1963); Paul Murphy, The Meaning of Free Speech: First Amendment Freedoms from Wilson to FDR (Westport, 1972), 59-76. Cary, "The Bureau of Investigation and the Radicals in Toledo," 430-440. See Zechariah Chafee, Jr., Free Speech in the United States (Cambridge, 1941), 141-170, on the peacetime sedition legislative proposals presented to Congress in 1919-1920; Donald Johnson, The Challenge to American Freedoms: World War I and the Rise of the American Civil Liberties Union (Lexington, 1963), 130-136; Murphy, Meaning of Free Speech, 77-100.

50) On the impact of the war on American society, see David Kennedy, Over Here: Ellis Hawley, The Great War and the Search for a Modern Order, 1917-1933 (New York, 1979). See also, David



Williams, "'Sowing the Wind': The Deportation Raids of 1920 in New Hampshire," Historical New Hampshire (Spring 1979), 1-31.

### Chapter III

#### The Red Scare, The Bureau of Investigation and the Deportation Raids of 1920: The Case of New Hampshire

In November 1917, only seven months after the United States had entered the war on the side of the Allies, the Bolshevik Party under the leadership of Lenin and Trotsky toppled the liberal, pro-war Russian Provisional government. The successful Bolshevik coup had immediate international and, in the United States, domestic consequences. The new Soviet leaders, unlike their immediate predecessors, sought a separate peace with Germany which seriously upset the balance of power in Central Europe and renewed Germany's confidence that it could win the war. At home, many Americans felt betrayed by Russia's withdrawal from the war so soon after the United States had committed troops to Europe. Some suspected that the Germans had assisted the Bolsheviks in a deliberate attempt to undermine the Allied war effort. Yet the belief that the Bolsheviks were "the Kaiser's agents" was not the only source of American animosity toward the Soviets. Many others feared the new regime because of its uncompromising radicalism and its call for the overthrow of capitalism.[1]

The Russian Revolution marked an important shift in the Wilson Administration's internal security strategy. Federal officials believed that because many anti-war radicals had proclaimed their support for the Russian revolutionaries they seriously threatened established values in America itself, not just the government's war policies. While only a few of those who identified with radical revolutionary goals ever resorted to force or violence, the line separating advocacy and action had not been clearly drawn in state or federal law. Instead, courts relied on the common law tests of criminality (i.e., bad tendency and presumed intent) in espionage and sedition cases. Civil liberties lawyers like Zechariah Chafee, Jr. found these tests to be "wholly inconsistent with freedom of speech and any genuine discussion of public affairs." And since radical fringe groups were presumably not entitled to First Amendment rights accorded to "legitimate" organizations, Justice Department and BI officials believed that investigations of all radical activities were well within their jurisdiction.[2]

Following the dramatic increase in security-related investigations in 1918, the Justice Department faced a serious dilemma. The department realized that it would be virtually impossible to prosecute all those who sympathized with the Russian revolutionaries. The process would be too costly, time consuming, and, in many cases, the verdict would be not guilty. At the very least, the government realized that in order to secure indictments and convictions it had to produce some evidence of sedition or espionage, beyond mere membership in a

radical organization. But, in most cases, it was nearly impossible to substantiate allegedly seditious activities. As the trials of the IWW leaders had demonstrated, only the most active members could be sent to jail.[3]

In searching for an alternative, Justice Department officials decided that deportation would be a more useful tool than sedition prosecutions. This new policy climaxed in the "Palmer Raids" of 1919-1920, named after the new Attorney General, A. Mitchell Palmer of Pennsylvania. Beginning in November 1919 the EI in cooperation with the Immigration Bureau rounded-up more than 10,000 radical aliens and citizens throughout the country. Even today the scope of these raids remains unclear. The FBI has consistently refused access to its investigative files, leaving a large gap in our understanding of the implementation of the deportation policy. It is possible, however, to fill some of those gaps. First, we shall briefly examine the status of the immigration law in 1919 and the policies developed by the Immigration Bureau and the Justice Department to administer and enforce the immigration statutes, under the prevailing social and political conditions of the immediate post war period. Next, we shall illuminate the consequences of these decisions by studying their impact in one state, New Hampshire.[4]

During the first two decades of the twentieth century traditional free immigration was restricted by a series of new laws which excluded political radicals from entering the United

States. In 1903, as a result of the assassination of President William McKinley by Leon Czolgosz, Congress approved legislation which barred from entry "anarchists, or persons who believe in or advocate the overthrow by force or violence of the government of the United States, or all forms of law, or the assassination of public officials." If a foreign anarchist somehow slipped in, federal law allowed three years to find and deport him or her. Congress changed the law in 1917 when both Houses overrode President Woodrow Wilson's veto of the immigration bill which had eliminated the time limit. Congress had embraced the idea that radical discontent was not native to the United States. Criticism would be silenced by deporting the troublemakers.[5]

When it had become obvious that not all war resisters and radicals could be punished under the espionage and sedition act, the Immigration Bureau, in cooperation with the Justice Department and Military Intelligence, decided to deport members of the IWW. Deportation of undesirable immigrants was an administrative, not a judicial, function. By law, the Immigration Bureau arrested and tried the suspect. The Commissioner General of Immigration reported his findings to his superior, the Secretary of Labor, who made the final decision. The alien had no right to appeal the decision to any higher authority.[6]

When the IWW cases reached him for review, Secretary of Labor William B. Wilson ruled that membership in the IWW alone was not sufficient grounds for deportation. Secretary Wilson held

that individual acts which violated the Immigration law would be the only criteria used to determine the fate of the alien held for deportation. Frustrated by the release of almost two-thirds of the Wobblies arrested, the Immigration Bureau and the Justice Department drafted and lobbied through Congress the Immigration Act of 1918. With its passage, for the first time in American history, membership in radical organizations became a deportable offense. "The membership provision alone," William Preston observed, "made possible the mass character of the red raids of 1919-1920." [7]

In June 1919, following a series of bombings at the homes of Attorney General A. Mitchell Palmer and other prominent government officials, the Senate pressed the Justice Department to investigate charges of a widespread conspiracy to overthrow the government. Congress appropriated funds for a comprehensive investigation of radical activities and on August 1, 1919 Attorney General Palmer reported that a General Intelligence Division (GID) had been formed "with the purpose in view of collecting evidence and data upon the revolutionary and ultraradical groups." As head of the GID, Palmer appointed John Edgar Hoover, a young EI clerk who had worked with the Attorney General in the office of the Alien Property Custodian. Hoover's immediate task was to organize the anti-radical division of the Bureau of Investigation. For that purpose, Hoover created a master file of all radical activities. "The GID receives weekly surveys from the various offices concerning all matters of general intelligence coming under investigation," the Attorney

General reported, and the "card index makes it possible to determine or ascertain in a few minutes the numerous ramifications or individuals connected with the ultraradical movement." In an effort to improve the GID's effectiveness, Palmer replaced BI chief Eielaski, and appointed William Flynn, a former chief of the Secret Service, to head the Bureau. Palmer considered Flynn "the nation's foremost expert on radicalism." Flynn then chose Frank Burke, a Secret Service agent who had headed the agency's Russian division, as assistant BI chief.[8]

For this particular anti-radical operation, the Justice Department planned to arrest only aliens and hold them for deportation. In August GID chief Hoover met with Anthony Caminetti, the Commissioner General of Immigration, and the two agencies established a working relationship. Hoover was appointed to coordinate the joint effort to stamp out radical discontent and offered to assist immigration inspectors who were investigating radical aliens. Using funds that had been appropriated for investigations only, the GID assumed responsibilities formerly belonging to the Immigration Bureau. Hoover realized prior to the investigations that the Justice Department had no jurisdiction in the deportation process. The Department, he noted to Frank Burke, chief of the Bureau of Investigation, "has no authority to take any actions relative to radical activities." Nevertheless, Hoover plotted the course the government traveled between September 1919 and June 1920.[9]

By November 1919 Hecver and Caminetti had decided that membership in the newly organized Communist Party of America or the Communist Labor Party, a splinter group that had broken with the Communists over doctrinal differences, would be deportable offenses. In a brief prepared for Attorney General Palmer, Hecver asserted that party members were subject to the deportation regulations of the 1918 Immigration Act because the parties were dedicated to the overthrow of all existing governments (with the exception of the Soviet Union). Neither Palmer, Hecver, nor Caminetti sought the approval of the Secretary of Labor. Instead, they delivered him a fait accompli in January 1920.[10]

The first move came on November 7, 1919, when the Justice Department arrested 249 aliens in New York and five other states. Immigration officials at Ellis Island, New York, ordered them deported and sent them abroad on December 23, 1919. The speed and efficiency of the deportations alarmed leaders of radical organizations and defenders of civil liberties around the country. Their lawyers drafted a circular which explained the aliens' right to counsel at the preliminary hearing before the Immigration inspector. Organizations distributed flyers which urged anyone who was arrested to remain silent until joined by counsel to avoid self-incrimination at the hearing. In March 1919 Secretary Wilson had amended "Rule 22" of the Immigration Bureau's regulations governing the deportation process to provide legal counsel to aliens accused of violating the law from the beginning of the preliminary hearing. The ruling made it the



responsibility of the inspector to inform the alien of his rights. Wilson had changed the rule to insure "due process," a right guaranteed by the Fifth Amendment, frequently overlooked by zealous Immigration officials in the drive against the IWW.[11]

News of the circular disturbed Hoover and Caminetti who had planned to rely on informants provided by the alien at the preliminary hearing to prove his or her membership in the Communist or Communist Labor party. Frank Burke explained his agents' difficulty in finding evidence of party membership: "As the activities of aliens who are radically inclined are always most secretive in character, it is quite often next to impossible to prove actual membership with organization alleged to be anarchistic." The BI hired undercover agents and informers to infiltrate radical organizations to supply its agents with information about local party cells. In Bureau memorandums Hoover stressed the need to protect the identity of its spies. "Special agents will constantly keep in mind," instructions explained, "the necessity of preserving the cover of our confidential informants during deportation hearings." Clearly, from Hoover's perspective, "Rule 22" had to be restored to its pre-March form to prevent attorneys from being present at immigration hearings. Agents could then squeeze confessions out of suspects without exposing their informers. Little wonder that Hoover argued that attorneys would only bog down the hearings unnecessarily and that, he later wrote, "defeats the ends of justice." [12]

Hoover and Caminetti received their opportunity in December when Secretary of Labor Wilson was ill and absent from Washington. Caminetti pressed Labor Department Solicitor John Abercrombie, who was "acting" Secretary of Labor during Wilson's illness, to change "Rule 22." Caminetti prevailed and Abercrombie restored the rule to its original form on December 27. The amended rule read: "Preferably at the beginning of the hearing under the warrant of arrest or at any rate as soon as such hearing has proceeded sufficiently in the development of the facts to protect the government's interest (emphasis added) the alien shall be allowed to inspect the warrant and all evidence on which it was issued and shall be apprised thereafter he may be represented by counsel." [13]

Not completely satisfied with their plans the architects of the raids substantially weakened the last constitutional right of the accused. Hoover suggested that bail be set artificially high, \$5,000 to \$10,000, to prevent the alien from buying his or her freedom. Customarily bond for deportable offenses was \$500. [14] Hoover persisted and the warrants required the higher bond. [14]

After months of preparation the Justice Department decided to strike on Friday night, January 2, 1920. On December 31, "acting" Secretary Abercrombie signed three thousand warrants for the arrest of aliens throughout the country, charging them with membership in one of the communist parties. BI chief Burke sent his final orders to George Kelleher, agent in charge of northern

New England on December 27. Burke advised Kelleher, a former special assistant U.S. Attorney in Massachusetts, to have his undercover agents arrange meetings of local "communist" parties on January 2. Agents could then make mass arrests at pre-established locations and, in that way, they could avoid house-to-house searches. Only then could they recruit local police to assist in the arrests. After conducting the raid Burke ordered no publicity or information be given out by the agents and that such requests "for information be referred to division superintendent (Mr. Hoover)." The trap, which appeared foolproof to its designers, was set.[15]

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At the turn of the century New Hampshire's cities bustled with industrial activity. Manchester boasted the world's largest textile mill; the buildings of the Amoskeag Manufacturing Company lined the banks of the Merrimack River. Mills in Nashua, the state's second largest city, wove blankets and produced shoes, playing cards, ice cream freezers, and shearing machines. Concord, the state capital, was the home of the Swenson Granite Company, the state's largest. Portsmouth had a fine harbor which made it a center of trade and commerce. The United States Navy had established a shipyard there in 1812 and during the First World War shipyards employed many skilled and day laborers. Mills in Nashua turned wood pulp into paper products, Claremont's Sullivan Manufacturing Company exported drilling machinery around the world. Factories in Derry and Newmarket

manufactured shoes and textiles. The prospect of steady work and its proximity to Boston attracted immigrants to New Hampshire throughout the nineteenth and into the twentieth century.[16]

Beginning in the 1880's the "new immigrants," people from eastern and southern Europe, replaced immigrants from the United Kingdom, Scandinavia, and Canada. In New Hampshire the number of Polish, Lithuanian, and Ukrainian immigrants increased from 1,589 in 1900 to 8,787 in 1920 and composed about 10% of the state's foreign-born population. Most Slavs, called "Russians" by native-born Americans, settled in Manchester, Nashua, Berlin, Claremont, and Lincoln, while smaller numbers lived in Derry, Newmarket, and Portsmouth.[17]

Jerome Davis, assistant professor of sociology at Dartmouth College, described the immigrant colonies in 1922: "In nearly every city the Russians live in a group by themselves. When they come to the community they naturally gravitate to the poorest sections where the rents are cheapest. A process of segregation results, for race prejudice, strange customs and language barriers all make the Russian locate to live close to Slavic immigrants. . . . The Russian district is peopled almost entirely by the foreign-born and whether it be housing accommodations, food supplies, or medical aid that the immigrant seeks, he is likely to meet the foreigner almost exclusively." As with all immigrant groups, worker clubs at the factories and neighborhood social clubs served the educational and recreational needs of the Russian community. In Manchester, community leaders applied for

and received state charters for the 'Lec Tolstoi Club' and the 'Ukrainian Club.' Russian Orthodox churches established congregations in Manchester, Berlin, and Claremont, reflecting the growing Slavic populations in those towns.[18]

Given the history of Slavic communities in Europe and conditions in American towns and cities, it is not surprising that some would become activists who advocated radical social and economic change. Some immigrants brought socialist ideas across the Atlantic, while others were influenced by an American brand of radicalism. IWW ideas filtered north after the Wobblies scored a surprising victory in their efforts to organize textile workers in Lawrence, Massachusetts in 1912. Supported by workers throughout New England, the IWW used direct action and the general strike to increase pay schedules adversely affected by a Massachusetts law which reduced the work week from fifty-six to fifty-four hours. Success in Lawrence signaled the high water mark of IWW influence in the Northeast, and after 1912 widespread support for the IWW was more illusory than real. Despite the organization's decline, IWW propagandists continued to assail the evils of the capitalist system, antagonizing mill owners, factory superintendents, shop foremen, and conservative labor leaders. Fearing industrial sabotage, the destruction of property, and the spread of radical ideas, opponents of the Wobblies in Northern New England sought help. World War I gave them what they needed.[19]

In 1917 New Hampshire men responded patriotically to the call for recruits. Thousands, including many newly-arrived Slavs, signed up to serve in the armed forces as the United States prepared for war against the Central Powers. On April 12, 1917, six days after the United States declared war, the New Hampshire state legislature passed emergency legislation to prohibit walkouts, strikes, and lockouts in industries engaged in the manufacture of war material. Governor Henry W. Keyes appointed 100 men to a Committee on Public Safety. Chaired by John Jameson of Antrim, the Committee encouraged support for the war through a program of mass meetings, rallies, and parades. Committee members also worked with police officials to provide information about labor union and suspected radical activities to Bureau of Investigation agents who set up headquarters in Concord in 1917.[20]

The Committee on Public Safety did not disband after the November 1918 armistice, nor did peace in Europe allay nativist suspicion of foreigners. Indeed, two years of anti-German propaganda had increased mistrust of the Slavic immigrants living in their communities, and some perceived them as agents of violent revolution.[21]

Bureau of Investigation detectives exploited these fears and promoted anti-radical measures at the state level. In March 1919 Special Agent A. V. Levensaler, a graduate of Bowdoin College and Harvard Law School who was later appointed assistant U.S. Attorney in New Hampshire, wrote an anti-Bolshevist bill for New

Hampshire Attorney General Oscar L. Young.[22] The proposal prohibited "bolshevist" ideas from being taught, advocated, or practiced in New Hampshire. The legislature approved the measure, despite objections from pro-labor representatives from Manchester and Nashua. Governor John Bartlett signed the bill into law on March 28, 1919, and released the following statement to the press: "We have enacted in the closing days of the New Hampshire legislature the most drastic anti-Bolsheviki law in the United States, and I have requested our Law Department to rake the state with a fine tooth comb to find evidence of their work, which are rumored to be here in two or three centres. No cost will be spared to suppress the social viper." The legislature also passed, and the governor signed legislation which prohibited public assembly and parades without first obtaining a permit from local officials. Exceptions were granted to fraternal organizations. The state office of the American Federation of Labor criticized the bill because of its anti-labor overtones.[23]

Critics of the state sedition legislation were promptly investigated by the BI. On May 5th, Charles W. Tobey, Republican Speaker of the New Hampshire House of Representatives, a noted progressive from Temple who later became a U.S. senator, informed Agent Levensaler that he had received a telegram from Sidney Downing of Lincoln protesting the passage of the "anti-Bolshevist" bill since it restricted the right to free speech. After inquiring about Tobey and his support of the bill in the House, Levensaler contacted Thomas Moore, chairman of the

Committee on Public Safety in Lincoln, asking him for a sketch of Downing's background and political beliefs. "Mr. Downing is always on the opposite side of every question," Moore told Levensaler, "He is especially opposed to employers of labor, posing as friend of the poor and down-trodden man," but was, despite the protest, essentially harmless. Downing's protest, however, earned him a spot on Hoover's card index, listed as a "Bolshevist sympathizer." [24]

The ink of Governor Fittlett's signature was barely dry on the state's seditious law before Bureau agents, who had no authority to arrest suspects or seize property and literature under the new law, put it to use. From the sidelines, special agents instructed local police to disrupt meetings and raid clubs in Manchester and Nashua. Chief M.J. Healy of Manchester turned over to Levensaler pamphlets and a newspaper of "undoubted Bolshevik or IWW content" that had been taken from Stanislaus Petrovski and Constanta Dernatis, both of whom had been arrested for illegal gambling. Under questioning, they had admitted receiving the pamphlets on Saturday, June 6, at the Polish Hall on Chestnut Street. On September 22, Police Sgt. Manning raided the Tolstoi Club, 41 Central Street, Manchester, and seized flyers printed in Russian and letters addressed to Andrew Kolas from "Bolshevik" organizers in Claremont, Derry, and Lincoln. Chief Healy turned the evidence over to special agent Martin E. Sullivan, who then sent it to Boston for translation. Nashua police, acting on a tip from Sullivan, raided a local publishing house, finding copies of newspapers entitled "The Worker," "The



Labor Mar's Calendar," and copies of the Russian Soviet Constitution. Sullivan urged Chief Irving F. Goodwin to hold the material until its contents could be translated by a Bureau agent from Boston. Chief Goodwin agreed and made literature secured by his men available to Bureau agents "at any time." [25]

Members of the business community assisted Bureau detectives, opening their personnel files upon request and volunteering any bit of rumor or gossip that they had heard about radicals employed by their company. Robert Stanley, a Bureau contact whose name had been given to Levensaler by Speaker Tobey, telephoned the Bureau after he had discovered that copies of "Novy Mir" (New Life) were being distributed to workers at the Parker-Young Company in Lincoln. Levensaler later examined the paper, had it translated by a "loyal" Russian and advised Stanley, who was manager of Parker-Young, that the paper violated the state sedition law and suggested prosecution of anyone found in possession of "Novy Mir." Managers of the Amoskeog Company, the Sullivan Shoe Company, the Nashua Manufacturing Company, and the National Construction Company of Portsmouth sent the Bureau literature found in their shops and workrooms along with the names of individuals they had discharged for their political activities or who they suspected of distributing the leaflets. [26]

Businessmen used their own undercover agents to root out radicalism. George S. Hewins of the Shattuck Construction Company, Portsmouth, had hired Abram Adelman of the Wood

Detective Agency, Boston, in February 1919 to collect information of possible IWW activity among his workmen. When interviewed by Levensaler, Hewins suggested that the Bureau work directly with Adelman, who posed as a radical while working as a riveter at the Shattuck shipyard. Levensaler agreed and met with Adelman who shared the names of the radicals he knew of at Shattuck and in the community. E.H. Hunter, an undercover detective employed by the New Hampshire Association of Manufacturers, worked at the Nashua Manufacturing Company and informed the Bureau of union and radical activities among Polish and Lithuanian workers at the plant. Deputy Chief Campbell of Nashua put Sullivan in touch with Edward Hartwell, a special officer with the Nashua police, who also did undercover work as an employee of the Nashua Manufacturing Company. Hartwell, who was close to many Russian workers, shared his information with Sullivan and gave him a copy of a treatise on the Soviet Russian Government. Sullivan sent the work to Boston for translation.[27]

In Portsmouth, union leaders joined the fight against radicals. Richard Coney, long-time president of the state Federation of Labor, and H.R. Thompson, recording secretary of the Metal Trades Council, which represented some seven hundred workers in the Portsmouth shipyards, requested the assistance of the Justice Department. Coney and Thompson asked special agent J.C. Leighton to investigate the activities of the "Open Forum", a leftist group organized within the existing union structure by Peter Henry and Harry Hartford. The "Open Forum" advocated the six-hour workday and demanded \$1.00 per hour for all shipyard

employees. Leighton contacted Albert C. Shaw of Portsmouth, who had done work for Naval Intelligence, to assist in the investigation of the "Forum." Shaw hired informers to attend meetings and supply him with the minutes of the "Open Forum" debates. M.E. Clark, a right-wing socialist hired by Shaw, informed Shaw that a group of "Russian" radicals met at the "Last Chance Tavern," Market Street, Portsmouth, to discuss politics and shoot pool. Clark also gave Shaw copies of the Communist Labor Party newspaper he had received in the mail. Shaw sent Charles Palmer, "Loyal Pole," to join in the discussions at the "Last Chance" and collect the names of the group's members. Spies and informers were also active in Manchester and Lincoln, participating as members of radical clubs and organizations.[28]

Federal postal officials also cooperated with Bureau agents. The Espionage Act of 1917 had promoted the local postmaster from low-level bureaucrat to community censor, empowering him to impound radical literature that he found to violate the law. Postmasters in Manchester, Nashua, Lincoln, and Portsmouth received instructions from Washington to turn over to Bureau agents parcels and letters addressed to persons suspected of radical activities. In New Hampshire the postmasters received lists of suspects from Levensaler, who had his agents pick up entire bundles, or copies, of newspapers, personal letters, and correspondence for department files in Concord, Boston, and Washington.[29]

Bureau agents did not limit their investigations to mere cooperation with police, businessmen, labor leaders and postal officials. Special agents Levensaler and Sullivan reported to Washington that they had installed "dictaphone" listening devices in four halls on seven different occasions between February and December 1919.[30] Sullivan and Levensaler "bugged" meetings of the Manchester local of the Cigar Makers Union, American Federation of Labor, to gather information on a rational strike by that union.[31] Agent Sullivan asserted that the strike was an effort by radicals to wrest control of the union from the conservative leadership and withdraw the Cigar Makers from the American Federation of Labor. The strike, Sullivan continued, "is an attempt on the part of the Bolsheviks to create a trade revolution among workers of this country," a thought echoed by GID chief Hoover when he declared that seventy-five percent of the strikes in 1919 were inspired by the Communists.[32]

Sullivan and Levensaler also installed dictaphones in the meeting halls of the Polish, Lithuanian, and Ukrainian Clubs in Manchester and Nashua, hoping to record speeches by guests speakers from Boston and New York. On June 16, the most radical event Sullivan could report was a card game involving thirty Poles who had gathered at their Manchester "headquarters." [33]

Breaking and entering was also employed. Without warrants Sullivan and Levensaler entered and searched the Leo Tolstoi Club, the Ukrainian Club, and the Polish Club in Manchester five times between July and December 1919. Sullivan removed the

padlock from the door of the Tolstoi Club on November 3 and made a thorough search of the premises, seizing numerous pamphlets and newspapers. He re-entered the club the following day with an interpreter, un-locked a glass paneled backcase in which membership lists were kept and transcribed names and addresses. On December 4 Levensaler entered the Manchester Polish Club to confiscate literature and other evidence of radical activities. "Agents had little opportunity to make a search of the premises, as the caretaker of same was chopping wood in the cellar immediately hereath the rooms," he reported. "This place will be kept in mind and the first favorable time a more thorough investigation will be made." Sullivan searched meeting halls used by Lithuanians and Poles in Nashua but declined to break into rooms containing charters and membership rolls. "Agents did not consider this advisable," he wrote, "but will endeavor shortly through some other method of approach to get a list of members." Agents also surveyed meeting places of suspected radicals, checking entrances and exits "for the purpose of becoming more thoroughly acquainted [with the building], anticipating a thorough investigation of these quarters in the near future." [34]

The next step was for Bureau agents to translate association with Russian social clubs and membership in radical labor organizations into membership in the Communist Party. Orders issued by the GID instructed special agents to name individuals in sworn affidavits which would certify his or her membership in the Communist Party. The New Hampshire BI office sent 102 names to the GID in Washington, where the affidavits served as a basis

for the arrest warrants issued by "acting" Labor Secretary Abercrombie on December 31, 1919. The problem with the plan was that the agent who had signed the affidavit had no evidence, admissible in court, which would substantiate party membership. All radical activities were blanketed under the "Communist" label.[35] Members of the executive committee of the "Open Forum" were named in affidavits signed by Ieversaler. Russians who were listed by Thomas Moore of Lincoln in a letter to the Bureau's concord office became party members after Ieversaler filled in their names on the affidavits. Likewise, Sullivan swore that members of the Tolstci, Lithuanian, Ukrainian, and Polish Clubs were Communist Party members. One's guilt was determined by Hoover's and Caminetti's decision that membership in the party was a deportable offense and by the subsequent need to create a "communist" conspiracy which sought to overthrow the government. The circle was completed; the immigrant, by bureaucratic whim, was systematically stripped of his constitutional rights and then suited by tailors in the dress of a political party in which membership meant deportation to an unsettled and war-scarred Europe.[ 36]

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January 2, 1920, differed little from other recent Fridays. Factories ran their normal schedules and workers received their pay for their week's labor. Newspapers reported no sign of unrest, such as walkouts, strikes, or demonstrations. Rather, they reported the upset victory of Harvard over Stanford in the

Rose Bowl, by the score of 7-6, and the effect of Prohibition on New Year's celebrations in "wet" states; New Hampshire had been dry since 1917. A cold front from Canada had swept through the state and temperatures dropped below freezing for the third day in a row.

That evening people in the "Russian" communities gathered together at their clubs some to hear socialist speakers, while others danced, played cards, or shot pool. An unexpected knock at the door and the sudden appearance of government agents and police broke up the parties. The fact that the agents had no search warrants or warrants for the arrest of many of the people present did not stop them from detaining everyone present. Sedar Serachuch, arrested at the Stanley-Young Paper Mill clubroom, asked the agent to see the warrant. Serachuch later testified: "He showed me his fist and said 'This is your warrant,' and continued to search the room." Fred Chaika, taken from his home in Lincoln at 11:00p.m., was shown no search warrant and was handcuffed despite a broken wrist. The police took him to the Mill clubroom where he was held with fourteen others. The government did not issue a warrant for his arrest until Sunday evening, after taking him to the Concord police station.[37]

In Manchester, special agent Sullivan led a group of forty local police and captured fifty-four people at the Tolstoi Club. The agent did not even bring the warrants during the raid. Immigration Bureau inspectors waited at the police station with the warrants until the men from Justice brought in the suspects.

They then tried "to connect them up with the warrants." Some of the evicence seized by the police included musical instruments, trunks filled with pieces of cloth "thought to be stolen from the local mill," pictures of Lenin, Trotsky, and Emma Goldman, and "anarchist" literature. Agents allowed no one, not even a Russian Orthodox priest, to visit the prisoners.[38]

In Nashua the raid at St. Jean Baptiste Hall, rented for the evening by the Lithuanian Club, netted 141 suspects, the largest single haul in the country. Police searched everyone present, handcuffed the men and took thirteen women into custody. One of the women, Annie Valiskas, twenty-one, was a mother of three. At the station, federal agents showed her a bag which they claimed they had taken from her house. She denied ownership of the suitcase, which was filled with radical newspapers, but identified two prayerbooks; one belonged to her, the other to her father. Agents produced no search or arrest warrants. Mrs. Valiskas and three other women were held from Friday night to Saturday afternoon. The police then released her and six others for lack of evidence.[39]

In Portsmouth police captured eight aliens, raiding homes on Russell and McDonough Streets. Koly Hcnchkoff, arrested asleep at home, had worked at the Atlantic Shipyard for eight years and had been a member of the "Open Forum." John Bellows and his brother Stanley were arrested in the back room of Stanley's grocery store while playing cards. John had organized the group that met at the "Last Charce" and remained in custody while his



brother was released on his own recognizance. On Sunday, January 4, the remaining seven traveled to Deer Island, Boston, to await deportation.[40]

Elsewhere in the state agents arrested twelve persons in Newmarket and questioned them in the Dover jailhouse. In Derry, police rooted out twenty-one suspects and sent them to Manchester by electric tram for questioning. The raids in Lincoln netted twenty-seven men, along with two women who were fluent in English and taught in the Russian community there. A federal agent and Berlin police arrested eight and took them to the Merrimack County Jail in Concord by automobile.[41]

In Claremont Bureau agents were in members of the fire department and the Board of Selectmen and raided "Joe's Russian Baths," 101 Main Street, and a house at 172 Main Street, arresting twenty-three men in all. The suspects offered no resistance and were taken to the Central Fire Station. Examination began immediately. "The prisoners were astonishingly ignorant of anything pertaining to Sovietism, and it required considerable ingenuity and threatening persuasion," the Claremont Advocate reported, "to get anything out of them." The city's other paper, the Daily Eagle confirmed "that for the most part the men were not disposed to acknowledge any connection with the organization (Communist Party), nor give any information which would assist in identifying them with it." [42]

Interrogators throughout New Hampshire ran into identical problems trying to establish an alien's membership in a communist party. Evidence suggests that while many of the aliens captured entertained radical socialist ideas, party affiliation was less important to the Russian radicals than to the agents, who had to prove membership to complete the case against the suspect. When all else failed the BI agents simply manufactured membership in the party. Fred Chaika did not know he was a member of the party "until the first meeting with the immigration inspector. When the policeman showed me a membership book he asked me whether that was my name, and I said 'yes.' Then he said the book was a membership book in the Communist Party." Anton Barlatuk, arrested in Lincoln, denied that he was a member of the party. At his habeas corpus hearing Barlatuk testified: "I have never come to any thought against the government of the United States, only my thoughts of the Russian government." He said that he had joined the club at the paper mill because he "had no other place to go, and I thought I ought to belong to some organization." Similarly, Koly Honchkoff, taken from bed at 10:00p.m., denied membership in the Communist Party. At the preliminary hearing, when asked if he belonged to a union, he replied "yes, for three years." The interrogator put down three years in the Communist Party and the questionnaire became part of the official record. Sedar Serachuch, also arrested in Lincoln, testified that he had never read the paper called Communist, had never heard of the party's manifestoes, and did not know any of the party's doctrines. Serachuch, while admitting to membership in the Socialist Party,

denied membership in the Communist Party.[43]

On Sunday, January 4, BI agents accompanied by Chief Healy, Captain Charles Healy, and Inspector Joe Gorey of the Manchester Police Department took 140 men and women from Manchester to Boston aboard the train labeled the "Red Special." Arriving in Boston, the prisoners marched handcuffed and in chains through the streets to the ferry landing. Officials made a special effort to attract attention to the spectacle, inviting newsmen and photographers to record the event. Immigration Commissioner Henry Skeffington and Deputy Commissioner James Sullivan greeted special agent Levensaler, who brought the largest group of deportees to Boston. The prisoners boarded the city steamer "Monitor" and headed for Deer Island, familiar to thousands as their first stop in America after the Atlantic crossing.[44]

There the New Hampshire group joined about four hundred others captured in raids in Massachusetts and Rhode Island. Commissioner Skeffington and BI superintendent Kelleher received permission from Boston Mayor Andrew Peters to use the new Deer Island prison, and the aliens became the facility's first occupants. Still, the conditions at the jail were frightful. Despite the January cold, the cells went unheated for three days. Overcrowding occurred. There were never enough toilet facilities. One prisoner committed suicide by casting himself out of a prison window. Others went insane. Some contracted pneumonia and had to be hospitalized. The prisoners were held incommunicado, and one compared internment at Deer Island to

imprisonment in Czarist Russia. For the immigrants held at Deer Island the dream of greater opportunity had turned into bitter disillusion. Some prisoners petitioned officials to be returned immediately to their native lands.[45]

During the next week the Immigration Bureau received numerous requests from attorneys from New Hampshire, Massachusetts, and Rhode Island offering to represent the aliens charged with membership in the communist parties. On January 6, Commissioner Skeffington refused them to act as counsel at the deportation hearings held at Deer Island. The Commissioner also banned the public and the press from the hearings. Skeffington warned the public not to believe the "sob stories" about the hardships suffered by the "reds." "Remember the bombs, those nefarious engines of death sent through the mail," he told a group of Boston citizens, "These men (he forgot to mention the women) would not hesitate to kill you or your children." [46]

The precise results of the hearings are difficult to determine. Immigration Bureau records were removed from the National Archives, at the request of FBI director Hoover, in the early 1960's after William Preston had used them to write Aliens and Dissenters. High search fees prohibit recovery of the individual files which are necessary to determine how many of the aliens captured in New Hampshire were found guilty and subject to deportation. It is safe to assume that as a result of the habeas corpus hearings following the raids, few, if any, of the immigrants were actually deported.[47]

The hearings began on January 6, 1920. Judge George Weston Anderson, who was born and raised on a farm in Acworth, New Hampshire, presided. A friend and colleague of Supreme Court Justice Louis Brandeis, Anderson had served as U.S. Attorney in Boston during the first months of the First World War. Despite the heavy concentration of defense-related industries in the district, Anderson did not succumb to the wartime hysteria. Experience taught him that "99 per cent of the spy plots were pure fake" and, consequently, only a few people were prosecuted and one was convicted for violating the espionage act in eastern Massachusetts. President Wilson appointed Anderson to the Federal Circuit Court of Appeals in 1918 after he had served for a year on the Interstate Commerce Commission.

The first case involved Peter Frank, a U.S. citizen who had been arrested in Chelsea, Massachusetts on January 2. Anderson ordered the Immigration Bureau to release Frank, ruling that the Bureau had absolutely no authority to hold a citizen. In the wake of the Frank decision, the Immigration Bureau released John Wagnon, a U.S. citizen from Manchester, New Hampshire who had refused to cooperate with the police on the night of his arrest. George Kelleher of the BI claimed that "citizens dragged to Deer Island are themselves to blame, as they were given ample opportunity by the men who conducted the raids to show that they are Americans." [48]

In April, attorneys Morris Katzeff of Boston and Lawrence Brooks of Cambridge filed petitions of habeas corpus for twenty-eight of the aliens still held at Deer Island. The petitioners included seven persons from New Hampshire. Following an exhaustive examination of the conduct of the Justice Department during the raids, Judge Anderson granted the writs and ordered the prisoners released on \$500 bond pending the final decision of the Secretary of Labor. On June 20, 1920, Anderson issued a lengthy written opinion which was highly critical of the Justice Department. "I refrain from any extended comment on the lawlessness of our supposedly law-enforcing officials," Anderson wrote, "It may, however, be fitly observed that a mob is a mob, whether made up of government officials acting under instructions of the Justice Department, or of loafers, criminals and the vicious classes." Like much of the criticism that followed, Anderson's observation infuriated the GID. Hoover concluded that parts of the decision were an "unjustifiable misconception of the facts and is the construction which the most perverted mind could not put upon the evidence presented at the hearing." [49]

Initially, New Hampshire daily newspapers applauded the efforts to rid America of the "Red Menace." The editor of the Concord Monitor believed that "America is merely protecting herself against the activities of irresponsible aliens." The Manchester Union welcomed the arrests and praised the swift, efficient operation. The deportation raids, the editor claimed, dragged Russian communism into the open "to show the active poison working in our nation under the direction of intelligent

leaders." Foster's Daily Democrat could hardly believe that "the disease of Bolshevism" could be found so close to Dover, in neighboring Newmarket. The townspeople must sit up and take notice, it proclaimed, "before we have to struggle for our own." The Clarendon Daily Eagle declared that the raids proved that the government was not asleep and revealed the gigantic plot to overthrow the government. "No effort," its editor wrote, "should be left untried to bring to the bar of justice those who plot to overthrow the institutions and overpower its laws." [50] New Hampshire dailies did not cover the events in Boston after January 6, 1920. In June most newspapers either failed to report the outcome of the habeas corpus hearings or buried that news in the last pages of the paper. [51]

Protests by liberal journals contrasted most daily newspapers' single-minded approbation of the raids. The Nation declared that any person, citizen or alien, who breaks a specific law should be brought to trial, and if found guilty, punished. Clearly, the article continued, membership alone in the Socialist or Communist parties was not a crime punishable by law. The Justice Department had subverted basic constitutional rights during the raids. "The only way," the article concluded, "to end dangerous discontent is to remove its causes. Unless that is done, those who today are sowing the wind will before long reap the whirlwind." [52]

The New Republic compared the raids to the witch-hunts of the seventeenth century. There was nothing new about the "red hysteria." Red scares, like witch-hunts, arose from modes of thought, the writer argued, which evolved from the ignorance of primitive cultures. It was "quickened into an intenser life by a theological struggle which allies terrorism with credulity." The writer claimed that the root of the problem was official and unofficial lies, deliberate lying and imitative lying. "As a result of that lie," the piece concluded, "a nation, solid and imperturbable had been wracked by persecution, by cowardice, by mistrust. Its great problems are postponed; its great tasks are undone; its houses turned into bedlam, the humble oppressed, its ideals flouted and the light it held to the oppressed of mankind extinguished." [53]

Adverse judicial decisions and public criticism combined with bureaucratic factionalism to limit the success of the EI's deportation plans. When Secretary of Labor Wilson returned to Washington in late January he restored "Rule 22" to its pre-December form, amending the rule to allow counsel for the accused from the beginning of the deportation hearing. Following a meeting with Justice Department officials and counsel for the opponents of the raids, Wilson ruled that membership in the Communist Party, but not the Communist Labor Party, was a deportable offense. Wilson appointed his assistant secretary, Louis F. Post, to administer the deportation laws under his new guidelines. Although Post personally believed that no one should be deported for mere membership in a political party, no matter



how radical the party might be, he felt obliged to carry out the Secretary's orders. Nonetheless, by April, Post cancelled the warrants of all but 563 of the men and women seized in January for lack of sufficient evidence of their membership in the Communist or Communist Labor parties. Several conservative congressmen who supported the Justice Department's original policy, that is, to deport first and ask questions later, called for Post's impeachment. The resolution, however, failed to attract any appreciable support, and Post weathered the storm.[54]

The effects of the deportation raids can be assayed on the local, state and national level. First, on the community level, the raids affected family life, jobs opportunities, and migration. Many husbands, fathers, and sons were wrenched from their homes with resultant loss of income and family stability. Arrested workers could not return to their jobs even after they had been cleared of all charges against them. Those individuals blacklisted by the employers probably moved out of the state. By 1930 only 75% of the people who had claimed Slavic origin in the 1920 census remained in New Hampshire. The raids may explain this out-migration, but this can only stand as supposition since the Justice Department removed Immigration files from the National Archives and now denies free access to these records.

Second, on the state level, while the deportations did not launch any political careers, BI activities have had some lasting effects. The raids may have been partially responsible for the

limited success of unionization, but the evidence remains sketchy and impressicristic. The state sedition law first enacted in 1919 remains on the books. Generally, state leaders continued their willingness to defer decision-making to federal agencies in the security field, while federal agencies supported local anti-radical activities. For example, the FBI funneled information to Attorney General Louis Wyman in the 1950's when he was investigating "subversives" in New Hampshire.[56]

On the national level, the deportations raids were less successful. They drove the BI and the GID underground, and ruined Attorney General Palmer's presidential aspirations. They also gave GID chief Hccver his initial experience in fighting "communnist" subversion. After the Justice Department's methods had been thoroughly repudiated by the courts and the Labor Department, Hccver learned that "due process" had to be, at least publicly, respected. Hoover also understood that, above all else, the BI had to protect the confidentiality of its files. Even though many of the Bureau's worst abuses were covered-up (e.g., warrantless search and seizure and the deliberate falsification of legal documents), BI memos released to Judge Anderson showed that the BI had entrapped many of the aliens arrested in January and that it had employed agents provocateur.[57]

From this, Hccver concluded that future anti-radical operations would have to be carefully scrutinized and limited to two general categories. First, rather than involving itself

directly in the arrest and prosecution of "subversives", the Bureau would help state and local law enforcement agencies organize anti-radical intelligence units (later known as "red squads"). For a short time the strategy was successful, and in 1922, over 100 radical political leaders were arrested and convicted.

Second, Bureau officials decided to continue to collect covertly information on a broad range of lawful political activities that the GID had determined to be "subversive." During the early post-war years the GID's definition of "subversive" was so inclusive that the Bureau barely discerned the bomb-thrower from the liberal law professor. Both were seen as potential threats to the nation's security. Once persons were so identified, the Bureau often resorted to extra-legal, clandestine measures in an attempt to silence this dissent. This surveillance, unlike the Bureau's association with the red squads, remained absolutely confidential. In this sense, these investigations differed dramatically from the Bureau's earlier anti-radical activities which had been duly reported to Congress by the Attorney General, and marked a new point of departure for the Bureau.[55]

The BI's role in the rise of the urban intelligence units has been understood for some time. This was, after all, the hallmark of the Justice Department under Warren Harding and Harry Daugherty. Both Daugherty and the new BI chief William Burns were proud of the urban red squads. On the other hand,

historians and others have until recently failed to identify the Bureau's investigations of its early critics. Chapter four will address this issue.[60]

## NOTES

1) Peter Filene, Americans and the Soviet Experiment, 1917-1933: American Attitudes toward Russia from the February Revolution until diplomatic recognition (Cambridge, 1967), 9-63; Robert K. Murray, Red Scare: A Study in National Hysteria (Minneapolis, 1955), 15-17.

2) Zechariah Chafee, Jr., Free Speech in the United States (Cambridge, 1941), 24-25, 80-84; Paul Murphy, World War I and the Origins of Civil Liberties in the United States (New York, 1979), 179-247.

3) Melvyn Dubofsky, We Shall Be All, 398-444; William Preston, Jr., Aliens and Dissenters, 104-128. Murphy, World War I and the Origins of Civil Liberties, 104-128. Loren Lee Cary, "The Bureau of Investigation and Radicalism in Toledo, Ohio: 1918-1920," Labor History, 21 (Summer 1980), 430-440.

4) Investigative Records, Bureau of Investigation, 1908-1922. The New Hampshire file is divided into the following categories: OG 344962, "Bolshevik and IWW Activities in Manchester"; OG 352317, "Bolshevik and IWW Activities in Portsmouth"; OG 352409, "Bolshevik and IWW Activities in Nashua"; CG 356956, "Bolshevik and IWW Activities in Lincoln".

The reports of the raids in New Hampshire are found in file OG 377853-55. This file includes copies of the signed affidavits sent to the GID in December 1919 from the BI Concord office. The general Bureau records of the raids, including departmental memos, warrants, and warrant cancellations are found in OG 341761.

5) Preston, Aliens and Dissenters, 32. Also see generally, Preston, 11-47 and John Higham, Strangers in the Land: Patterns of American Nativism (New Brunswick, 1955). Siegfried Hesse, "The Constitutional Status of the Lawfully Admitted Resident Alien: The Pre-1917 Cases," Yale Law Journal 68 (July 1959), 1578-1625. "The Inherent Power to Expel," Yale Law Journal 69 (December 1959), 262-297.

6) Preston, Aliens and Dissenters, 88-151; Louis Post, Deportations Delirium of 1920 (Chicago, 1923).

7) Preston, Aliens and Dissenters, 183.

8) Senate Document 153, "Investigation Activities of the Justice Department, 1919," 66th Cong., 1 Sess. (1919); Annual Report of the Attorney General, 1920 (Washington, 1921), 172-73. Stanley Cohen, A. Mitchell Palmer: Politician (New York, 1963), 203-206.

9) BI file OG 341761; Preston, Aliens and Dissenters, 210.

10) Palmer to Wilson, 1/2/20; Post to Wilson, 1/20/20, Justice Department Records, Record Group 60, No. 54809/General.

11) National Popular Government League, To the American People: Report Upon the Illegal Practices of the United States Justice Department (Washington, 1920); Preston, Aliens and Dissenters, 181-207.

12) Hoover to Caminetti, 1/20/20, Record Group 60, no. 54809/General. Flynn to all Special Agents and Employees, 8/12/19, in To the American People, 37.

13) Colyer v. Skeffington, 265 Fed.17 (1st Cir. 1920), 46; see John Abercrombie's testimony in "Charges of Illegal Practices of the Justice Department," Senate Committee on the Judiciary, Hearings, January 19-March 3, 1921,;

14) Hoover to Caminetti, 2/15/20, Record Group 60, no. 54809/General; Lowenthal, FBI, 223-36.

15) Burke to Kelleher, quoted in To the American People, 37-42.

16) J. Ruane Squires, The Granite State of the United States (New York, 1956).

17) Report of the Seventeenth Decennial Census of the United States, Census of Population 1950, vol. 2, part 29, New Hampshire (Washington, D.C.), Table 24, 34a.

18) Jercre Davis, The Russian Immigrant (New York, 1922), 56-57.

19) Joyce Kornbluh, ed., Rebel Voices: An IWW Anthology (Ann Arbor, 1964); Dubofsky, We Shall Be All; EI file OG 352317, 352409, 344962, 256956.

20) Squires, The Granite State, 646: Laws of the State of New Hampshire, Passed in 1917 (Concord, 1917), c.146.

21) EI file OG 356956.

22) Leversaler report, 5/19/19, BI file OG 356956; Laws of the State of New Hampshire, Passed in 1919 (Concord, 1919), c.155; The law prohibited advocating the overthrow or change in the government of the United States or New Hampshire, interference with any public or private right by force or unlawful means, assembling or advocating this, introducing into the state, publishing or distributing any matter, including pictures or advocating this. The maximum penalty for violating this law was ten years and a \$4,000 fine. The law also included an injunctive provision and allowed for the destruction of printed matter such as books and pamphlets. See Chafee, Free Speech in the U. S..

23) Boston Globe, March 28, 1919; Manchester Union, March 28, 1919; New York Times, March 30, 1919.



24) Levensaler report, 5/5/19, BI file OG 356956.

25) Sullivan report, 6/12/19, 9/19/19, 9/24/19, BI file CG 344962; Sullivan report, 11/14/19, BI file OG 352409; Levensaler report, 4/30/19, 5/23/19, 5/26/19, BI file OG 356956.

26) Sullivan report, 6/12/19, BI file CG 344962; Sullivan report, 4/18/19, 11/14/19, BI file CG 352409; Levensaler report, 3/13/19, 3/20/19, BI file OG 352317.

27) Sullivan report, 8/19/19, 11/14/19, BI file CG 352409.

28) Sullivan report, 7/19/19, 8/21/19, 12/17/19, BI file OG 344962; Levensaler report, 11/28/19, BI file CG 352317.

29) Act of June 15, 1917, c.30, Title I, as amended May 16, 1918, 40 Stat.553; Leighton report, 2/17/19, 2/18/19, 2/19/19, 2/20/19, 5/8/19; Levensaler report, 3/13/19, 4/1/19, 6/20/19, BI file OG 352317.

30) On October 13, 1912, K.M. Turner, inventor of the dictaphone, demonstrated his new machine at Grand Central Station, New York. "The detective value of the device consists of the fact that the transmitter weighs only six ounces and can be easily concealed," Turner explained to newsmen. "It can be installed in only four minutes and can be wired so as to transmit spoken words for more than a mile." (New York Times, 10/14/12) Private detective agencies used the dictaphone as early as January 1912 to collect information for their clients. When government agencies began using the dictaphone is uncertain. By

1918, however, the practice was common. In February 1919 the Circuit Court of Appeals, Second Circuit, condemned the use of the dictaphone by federal agents. In an opinion written by Judge Martin Martin, the court reversed a conspiracy conviction. "The practice of entering into the confidential domain of a lawyer's office, installing this instrument (the dictaphone) and by such methods eavesdropping, enter into the confidence of the defense ought not to be encouraged." McGuinniss et al. v. U.S., 265 Fed. 621 (2nd Cir. 1919), 629-30. Despite the warning issued by the Court, the Justice Department and other federal agencies continued to use the dictaphone to collect evidence.

31) On July 2, 1919, David Levy, secretary of the Cigar Workers' Local Committee, announced in New York that 25,000 went out as a result of a strike vote taken at an inter-shop convention on July 1. The Cigar Makers Union, used by Samuel Gompers as a springboard to power, was a model of union efficiency. The union demanded a 44-hour work week, a 50% pay increase and recognition of their grievance committee. Union locals in Boston, New Haven and Manchester joined the picket lines on July 8. On September 12, 1919, the Cigar Makers returned to work after management agreed to meet their original demands. New York Times, 7/3/19, 7/9/19, 9/14/19.

32) Sullivan report, 2/10/19, 2/11/19, 7/7/19, 7/9/19, 7/13/19, 7/15/19, 7/24/19, 7/30/19, BI file OG 344562.

33) Sullivan report, 5/4/19, BI file OG 352409; Sullivan report, 6/16/19, 6/18/19, 7/1/19, BI file OG 344962.

34) Sullivan report, 8/2/19, 12/15/19, BI file OG 344962; Levensaler report, 12/9/19, BI file OG 344962.

35) Ex Parte Jackson, 96 U.S.727 (1877); Ecyd v. U.S., 116U.S.616 (1886); Weeks v. U.S., 232 U.S.383 (1914); Silverthorne Lumber Company v. U.S., 251U.S.385 (1920). While the Supreme Court had not fully articulated a comprehensive doctrine regarding electronic eavesdropping by 1919-1920, the law regulating search and seizure was clearer. In 1886, in Ecyd v. U.S., the Court had held that the doctrine of the Fourth Amendment applied to "all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of life." (116 U.S.616, 630) In 1914, in Weeks v. U.S., the Court for the first time held that "in a federal prosecution the Fourth Amendment barred the use of evidence secured through an illegal search and seizure." Justice Day wrote: "This protection reaches all alike, whether accused of a crime or not, and the duty of giving it to force and effect is obligatory upon all entrusted under our federal system with the enforcement of the laws. The tendency of those who execute the criminal laws of the country to obtain conviction by means of unlawful seizure and confessions, the later often obtained after subjecting accused persons to unwarranted practices destructive of rights secured by the Federal Constitution should find no sanction in the judgements of the courts which are charged at all times with the support of the

Constitution and to which people of all conditions have a right to appeal for the maintenance of such fundamental rights." (232 U.S.383, 392) In Silverthorne v. U.S. the Court extended the ban on illegal searches "to leads furnished by illegally seized evidence, as well as the use of the evidence itself." Gerald Gunther, Individual Rights in Constitutional Law (Mineola, 1970), 305. From this it can be assumed that the Justice Department sanctioned, if not encouraged, the unscrupulous and illegal behavior of its employees. It is beyond the scope of this chapter to determine how widespread the practice of warrantless entry had become by 1919-1920, but evidence suggests that breaking and entering was common.

36) Levensaler report, 12/15/19, BI file OG 356956; Sullivan and Levensaler reports, 12/19, BI file OG 377853-55. In 1921 in testimony before a Senate Judiciary Subcommittee Attorney General Palmer defended his subordinates against charges that they had deliberately falsified deportation affidavits and forced immigrants to confess membership in the Communist Party during the preliminary deportation hearings on the night of the arrests. To substantiate his claims, the Attorney General entered into evidence affidavits solicited by the GID from its agents in which they denied any wrongdoing. I discounted these affidavits and Palmer's own testimony since it contradicted evidence submitted by those very same agents prior to the raids. As Zechariah Chafee told Senator Thomas Walsh of the Judiciary panel: "It might be worthwhile to point out that the men whom Mr. Palmer describes as 'sworn officials of the U.S.' are really policemen,

and that police testimony, however honest, is always subject to some discount because of the natural mental attitude of the witness. It is by no means to be taken at face value. Any one who has sat on a jury or argued a criminal case knows this very well." Chafee to Walsh, 1/17/21, Chafee MSS, Harvard Law School Library, Cambridge, Mass. This conclusion, incidently, was also reached by Judge George Anderson, the National Popular Government League lawyers and the ACLU in 1920.

37) Colyer v. Skeffington, 73-75.

38) Concord Monitor, January 5, 1920; Manchester Union, January 3, 1920; NPGI, To the American People, 46.

39) NPGI, To the American People, 55; Manchester Union, January 3, 1920; Boston Globe, January 3, 1920; Colyer v. Skeffington, 44.

40) Portsmouth Herald, January 3, 1920, January 5, 1920; BI file OG 377853-55.

41) BI file OG 377853-55; Manchester Union, January 3, 1920; Concord Monitor, January 3, 1920.

42) Claremont Advocate, January 9, 1920; Claremont Eagle, January 3, 1920.

43) Colyer v. Skeffington, 73-75.

44) Boston Globe, January 5, 1920; Concord Monitor, January 5, 1920.

45) Boston Globe, January 5, 1920; Colyer v. Skeffington; Chafee, Free Speech in the U.S., 213; NPGL, To the American People, 42-56.

46) Boston Globe, January 7, 1920.

47) Melvyn Dubofsky, We Shall Be All, 539. When I contacted the Immigration and Naturalization Service in Washington, D.C. I was informed that I would have to file separate Freedom of Information requests for the files of each of the individuals from New Hampshire who was held for deportation. And since the Privacy Act prohibits the release of personal information, I would first have to prove that each of the individuals was deceased before any information was released. In addition, I would be charged \$5.00 an hour search fees to find the documents with no assurance ahead of time that these documents would be found. Many files, I was told, had been lost or misplaced when they were removed from the National Archives at FBI director Hoover's request.

48) Alpheus T. Mason, Brandeis: A Free Man's Life (New York, 1956); Joan Jensen, The Price of Vigilance (Chicago, 1968), 158, 172; The Survey 44 (July 3, 1920), 489-90; The Nation 111 (July 3, 1920), 7-8; The New Republic 23 (July 14, 1920), 189-190; New York Times, February 14, 1938, 26; BI file CG 379228. In addition to the fact that there was only one conviction for

violation of the espionage act in Anderson's district while he was U.S. Attorney, there was no sabotage of defense industries in the Boston area, 1914-1917. See New York Times, index, 1914-1917. Boston Globe, January 7, 1920; Colyer v. Skeffington.

49) Colyer v. Skeffington: NEGL, To the American People, 42-45; BI file OG 379228. The habeas corpus hearings and Anderson's decision will be discussed in greater detail in the next chapter.

50) Concord Monitor, January 5, 1920; Manchester Union, January 5, 1920; Foster's Daily Democrat, January 7, 1920; Claremont Daily-Eagle, January 5, 1920.

51) An exception was the Manchester Union, which reported the news of Anderson's decision on page 1. The Portsmouth Herald reported the story on page 12, while the Concord Monitor and Foster's did not report the release of the aliens. The New York Times reported the outcome on page 14. None of the above paper ran editorial comments on the Anderson decision.

52) The Nation, January 17, 1920, 64.

53) The New Republic, January 28, 1920, 249-252.

54) Post, Deportations Delirium: Colyer v. Skeffington, 47; John Lombardi, Labor's Voice in the Cabinet: A History of the Labor Department from its Origin to 1921 (New York, 1942), 344-345. "Investigation of the Administration of Louis F. Post,

Asst. Secretary of Labor, in the matter of deportation of radicals," House Committee on Rules, April 27, 1920, H.Res 552, 66th Cong., 2nd Sess. (1920).

55) Report of the Seventeenth Decennial Census of the U.S., Census of Population 1950, vol. 2, part 29, New Hampshire (Washington, D.C.), table 24.

56) Stephen D. Weisbuch, "Urhaus v. Wyman," (unpublished senior thesis, Keene State College, 1976); "Sweezy v. New Hampshire": The Right to Prosecute Subversion - State vs. Federal Government," (unpublished seminar paper, University of New Hampshire, 1977).

57) Stanley Cohen, A. Mitchell Palmer: Politician, 217-267; NFGI, To the American People.

58) See Chapter V, supra; Frank J. Donner, Age of Surveillance, 40-44.

59) See generally, Report of the Attorney General, 1919, 1920, 1921; David Williams, "The Bureau of Investigation and Its Critics, 1919-1921: The Origins of Federal Political Surveillance," Journal of American History, forthcoming, December 1981.

60) Donner, Age of Surveillance, 40-44.



## Chapter IV

### The Bureau of Investigation and Its Early Critics:

#### Political Surveillance, 1919-1921

In May 1920 the National Popular Government League (NPGGL) published its searing critique of the federal government's post-war anti-radical policies. Entitled To the American People: Report Upon the Illegal Practices of the United States Department of Justice, it was signed by twelve distinguished attorneys, law professors and a former federal district court judge. The pamphlet documented many of the worst abuses perpetrated by the BI during the deportation raids and argued that the arrests seriously abridged the basic Constitutional rights of citizen and alien alike. The NPGGL's protest was joined by the Interchurch World Movement (IWM) and the Federal Council of Churches of Christ in America (FCCCA) co-sponsors of an investigation of the status of immigration laws and the deportation raids. In June 1920 the group released the results of its inquiry. This protest, together with Assistant Secretary Louis Post's administrative restraints on deportation, discredited the Justice Department's deportation policies and effectively scuttled BI plans for even more comprehensive deportations of radical aliens later that year.[1]

Stung by the wave of criticism, the Bureau, under the leadership of GID chief J. Edgar Hoover, secretly launched a comprehensive investigation of federal judges, Assistant Secretary Fost, the NPGL, the IWM, and the FCCCA. Believing their criticisms to be part of an insidious plot against the federal government, the Bureau equated denunciations of the deportations with subversion. As a consequence, the Bureau set out not only to identify members of these groups, but to disrupt, if possible, their activities and discredit their campaign. Since the FBI was able to keep these illegal activities secret for almost sixty years, Congress, Justice Department officials, and scholars have usually assumed that during the early post-war years the Bureau had limited its anti-radical operations to fringe groups such as communists, socialists, Wobblies, anarchists, and radical labor organizers. Thus, Athan Thecharis recently asserted that "the Red Scare of 1920 was a public effort [to harass and intimidate radicals] and was predicated upon specific laws, while the more abusive surveillance programs of the cold war years were conducted in knowing violation of federal laws." The following examination of the Bureau's investigations of its early critics shows that this conventional interpretation is inaccurate. Such a study also yields important new insight into the FBI's post-war priorities and the development of domestic political surveillance during this critical period.[2]

At first, Bureau officials were encouraged by the favorable reaction to the deportation raids. For almost a year, "red hysteria" had engulfed the nation. Many people feared that labor

militancy and strikes in the steel and coal industries would paralyze the country, making it ripe for revolutionary upheaval. Consequently, otherwise principled and conscientious individuals argued that the national emergency justified temporary suspension of the constitutional rights of radical aliens. As John Wigmore, dean of the Northwestern University Law School, observed: "When you are trying to protect the community against moral rats you sometimes get to thinking more of your trap's effectiveness than of its lawful constitution." On January 5, 1920, three days after the raids, the New York Times exclaimed: "If any or some of us impatient for the swift confusion of the reds have ever doubted the alacrity, resolute will, and fruitful intelligent vigor of the Department of Justice in hunting down the enemies of the United States, the questioners and doubters now have cause to approve and applaud." Many members of the bar also believed that the raids were necessary. "There is only one way to deal with anarchy and that is to crush it", one law journal explained, not with "a slap on the wrist, but a broad-axe to the neck." On January 10, the Senate passed the Sterling bill, a peace-time sedition act, in effect endorsing Attorney General Palmer's anti-radical policies.[3]

Not everyone was similarly impressed by Attorney General Palmer's red hunt. The indiscriminate arrests had prompted civil libertarians to organize a campaign to end government repression and popular intolerance and restore political freedoms restricted during the First World War. The National Popular Government League (NPGL), founded in 1914 to advance political and social

reform, led the opposition to the raids. The Interchurch World Movement (IWM), established in 1919 by over 100 Protestant denominations to work towards post-war reconstruction, sponsored a survey of the men and women held by the Immigration Bureau for deportation. The Commission on the Church and Social Service of the Federal Council of Churches of Christ in America (FCCCA) also spoke out against the Attorney General's goals and tactics.[4]

Within days of the arrests, disaffected government officials and liberal lawyers criticized the raids. On January 12, 1920, Francis Fisher Kane, the United States Attorney for eastern Pennsylvania, resigned in protest to the arrests. In an open letter to the Attorney General, Kane warned Palmer that "the policy of raids against large numbers of individuals is generally unwise and very apt to result in injustice." Several Immigration inspectors refused to co-operate with BI agents and were dismissed or transferred by Anthony Caminetti, the Commissioner General of Immigration. As reports of violations of basic Constitutional rights filtered out of the Immigration Bureau prisons, sympathetic attorneys offered to represent the aliens at the final deportation hearings. Following department policy, BI agents and Immigration inspectors steadfastly refused to allow aliens legal counsel. Taking a different tack, defense attorneys turned to the federal courts for writs of habeas corpus.[5]

The critics of the raids, especially the NEGI, came to rely heavily on evidence developed at the habeas corpus hearings, held in Butte, Montana and Boston, Massachusetts. By January 1920

official terrorism was part of everyday life in Butte. Beginning in 1916, federal agents regularly disrupted meetings, physically assaulted and arrested members of the radical labor union, the Industrial Workers of the World (IWW). In co-operation with the Justice Department, the Immigration Bureau held alien members of the IWW for deportation on evidence seized without warrants from their union halls and homes. John Jackson, one of the Justice Department's victims, petitioned federal district court judge George Bourquin for a writ of habeas corpus. Judge Bourquin, an outspoken critic of the Justice Department throughout the war, had been the target of BI criticism since March 1918 when he refused to send draft resisters to jail. Butte agents pleaded with John Lord O'Brian, special assistant to the Attorney General, to relieve Bourquin or to have him transferred to another district. In his reply, O'Brian reminded the agents that "there is no methods by which Judge Bourquin can be transferred." O'Brian also dismissed the agents' charges that Bourquin had acted in bad faith when he sentenced the draft dodgers to public service work at the local poor house and hospital.[6]

On February 12, 1920 Bourquin ordered the Immigration Bureau to release Jackson. The judge found little evidence that Jackson had personally advocated the violent overthrow of the government. "(H)e and kind are less a danger to America than those who indorse or use methods that brought him to deportation," Bourquin concluded. "These latter are the mob and the spirit of violence and intolerance incarnate, the most alarming manifestation in America today." [7]

On May 5, 1920, FI agent David Gershon submitted a weekly survey lamenting the lack of activity "in combatting radicalism by the local, city, state and federal officials" and charging that Judge Bourquin "is unquestionably in sympathy with the radicals, his decision in Jackson v. U.S. (sic) bearing out this deduction." The radicals, Gershon continued, used Bourquin's decision to block attempts by BI agents to arrest and search anyone or seize radical literature without "being clothed with proper legal warrants." In October, agent D.F. Costello investigated the IWW's defense attorneys, including Bourquin's son, George, Jr., who "like his father, is inclined toward radicalism." A month later, agent Baldwin Robertson commented that "the situation in Futte is indeed a serious one and not the least of the difficulties is his honor Judge Bourquin." In the same report, agent F.W. Kelley, a BI trouble-shooter, echoed earlier requests to remove Bourquin, claiming that it would "be in the best interests of the Bureau." [8]

The habeas corpus hearings in Boston, at which Judge George Weston Anderson presided, proved to be even more irritating to the Justice Department. In order to insure a fair and scrupulously judicious process, Anderson invited Felix Frankfurter and Zechariah Chafee, Jr, professors of law at the Harvard Law School, to serve amicus curiae during the hearings. Frankfurter, who taught administrative law, questioned Immigration Inspector Henry Skeffington and the chief of the BI's Northern New England District, George Kelleher, in order to develop the facts relating to the planning and execution of the

deportation raids. Chafee, who was preparing the first treatise on First Amendment law, advised Anderson on limitations of government power and other Constitutional questions raised by the mass arrests. Both men later helped Anderson draft his opinion at the judge's Brookline home.[9]

Throughout the hearings Anderson questioned witnesses to clarify points of fact and law. Government attorneys, led by assistant U.S. Attorney Louis Goldberg, claimed that the 28 petitioners were bona fide members of either the communist or Communist Labor parties and were, therefore, subject to deportation under the provisions of the 1918 Immigration Act. To prove party membership, Goldberg relied primarily on statements collected from the aliens by Immigration inspectors on the night of the arrests. Defense attorneys Morris Katzeff and Lawrence Brooks challenged the validity of the questionnaires that the aliens had "signed" by asserting, among other things, that at least 3 of their clients had never even heard of the party until their arrest. Anderson, confused by the conflicting testimony, directed questions to key government witnesses. During examination by the bench, District chief Kelleher revealed that BI informers had infiltrated local immigrant social clubs and helped to schedule meetings for the night of the planned raids. Many persons, Kelleher admitted, were held without warrants and remained in custody for as long as two weeks without cause. Anderson also raised questions about the Justice Department's role in the deportation process. He noted that Congress had specifically delegated authority to enforce the immigration laws

to the Labor Department, while Commissioner Skeffington and chief Kelleher both conceded that the Justice Department involvement in the deportation process had no statutory basis.[10]

On April 24, 1920, Anderson released on bail the 28 petitioners and reducing the amount from \$5,000-\$10,000 to \$500. The judge held that the aliens could not be deported for membership in the Communist or Communist Labor party alone, even if it could be proven. On June 22, Anderson entered the opinion of the court. Taking issue with the government's claim that, unlike citizens, the rights of aliens were not constitutionally protected, Anderson argued that all "persons" were entitled to "due process". As a consequence, the Labor Department had wrongfully denied the aliens counsel when the acting secretary amended the regulations on the eve of the mass arrests. Although Anderson could have decided the case on "due process" grounds alone, he chose to address other fundamental questions raised by the government's entire strategy. The judge found that the provisions of the 1918 Immigration Act unconstitutionally broad. Guilt, Anderson posited, was personal and the government could not deport persons because of membership in certain political or labor organizations. Immigration officials had to prove that the individual had advocated violence, conspired to overthrow the government or participated in terrorist activities. Guilt by association, he declared, had no place in American society and ran counter to all Anglo-American legal traditions. Anderson also found the illegal activities of government agents (e.g., warrantless searches, seizures, and arrests) particularly



reprehensible. Paraphrasing Thomas Erskine May, the nineteenth century constitutional scholar, Anderson condemned the use of informers, spies and agent provocateurs by the Justice Department: "I cannot adopt the contention that government spies are more trustworthy or less disposed to make trouble in order to make profit therefrom than are spies in the private industry. . .The spy system destroys trust and propagates hate." The government appealed Anderson's decision, claiming that Congress had allowed the Secretary of Labor to establish the criteria for deportation decisions and the secretary's decision was not subject to judicial review. The government did not address the questions of warrantless arrest, forced confessions, administrative irregularities and lack of due process.[11]

Encouraged by Anderson's decision, NPGL secretary Judson King and Jackson Ralston, the league's attorney, solicited support for a publication critical of the deportation raids. Eleven lawyers with extensive experience in public and private law assisted Ralston and lent their names to the final report. Swinburne Hale, a former officer in Military Intelligence who had argued that membership in the Communist or Communist Labor party was not grounds for deportation in a hearing before Secretary of Labor William Wilson in January 1920, helped Ralston collect evidence and prepare the first draft of the report. Six academics, departing from majority opinion in the law schools, edited the pamphlet. Ernst Freund of the University of Chicago Law School and the nation's foremost authority on administrative law and limitations of state and federal police power, joined

Frankfurter, Chafee and Dean Roscoe Pound of the Harvard Law School. Alfred Niles, former U.S. district court judge and professor of law at the University of Maryland, and Dean Tyrell Williams of the Washington University Law School also supported the effort.[12]

Two former government employees and two lawyers in private practice completed the citizens' panel. Francis Fisher Kane joined the committee after he resigned as U.S. Attorney. Frank Walsh, President Woodrow Wilson's choice to co-chair the War Labor Board, David Wallerstein of Philadelphia and Richard Brown of Memphis signed the report as a protest against "the ruthless and brutal disregard of the rights of the poor and defenseless people shown by the employees of the Department of Justice." [13]

At the height of the Red Scare defending the rights of suspected radicals was risky business. During the First World War, bar associations criticized, disciplined and, in some cases, disbarred lawyers who represented persons charged with sedition and "their exuberant nationalism. . . remained potent after the Armistice." To avoid charges of unprofessional, even unpatriotic behavior, the NPGL's lawyers had to be absolutely sure that each charge against the Attorney General and his subordinates was accurate and fully-documented. Accordingly, the completed NPGL study included sworn testimony, notarized statements and depositions, photographs, and copies of department instructions and memorandums. The NPGL had two primary objectives; first, to publicize Palmer's abuse of power and the

department's disregard for the law, and, second, to use the report as the basis for administrative reform of the deportation process and legislative reform of the BI. The League mailed copies of the report to newspaper editors, federal judges, Supreme Court justices, and congressmen. Later that year, the American Civil Liberties Union helped to distribute the report. In January 1921, a Senate Judiciary Sub-Committee investigated the charges against the Attorney General and, by the end of the year, the report had reached a national audience.[ 14]

News of the NPGL's work reached Hoover's office on May 5, 1920. In a letter addressed to the Attorney General, a staff member of the League sent copies of newspaper editorials critical of the Justice Department and noted that "(t)his may interest you Palmer. Those who trample and ignore the law are the real anarchists." On May 8, GID chief Hoover ordered a "discreet and thorough investigation of all essential facts." In a memo to an assistant, Hoover stressed that the investigation must remain secret because no criminal activity was involved: "The Bureau desire(s) to know who they are and to obtain full information concerning the NPGL. The inquiry should be directed as soon as possible, without precipitating issue." [15]

Agents from the EI's Washington, D.C. field office quickly went to work on the request, and, on May 19, special agent P.M. Kemon transmitted the results of the investigation. The NPGL, he found, referred to itself as "a permanent, central organization to promote Constitutional and Legislative measures which will

democratize our political machinery and establish control by the people." Kemon listed its officers, including Senator Robert L. Owens, the League's president, and the League's Progressive-style platform (support for initiative, referendum and recall, direct nomination and election of the President and effective publicity and corrupt practices acts). Kemon also provided personal information about Judson King, the League's secretary, Thomas Everitt, NPLI business manager, and Linus Bailey, a mechanical engineer who was active in League affairs. In addition, Kemon mentioned their marital status, their wives' occupations, home address, and their physical appearance.[16]

In his next report, dated June 2, Kemon outlined the NPLI financial situation, named financial contributors, and listed the remaining officers of the League, its advisory council, and its member organizations. After failing to secure data concerning the NPLI's finances from "confidential sources", Kemon reported that he visited the Munsey Trust Company, Washington, D.C., "in order to secure inside information." Kemon interviewed the bank's vice-president, who felt "under the circumstances he was forced to give our department information." Vice-president Pope informed Kemon that King was "simply a 'nut' with political phantasies," and was "financially irresponsible." Pope produced the League's financial ledgers and a complete list of donors, the amount of the donation, and League expenditures which Kemon passed on to the BI.[17]

Kemon's final memorandum, submitted on June 9, 1920 described the "Reccnstruction Conference" which the League had sponsored a year earlier in Washington. The memorandum brought to Hoover's attention the fact that Assistart Secretary Louis Post, the administrator of the deportation program, had addressed the League's ccnference on the topic of industrial democracy. Bureau investigations of Post, however, had begun immediately after the January raids. On January 15, 1920, worried that Assistant Secretary Post might undermine the Justice Department's deportation program, Hoover asked several BI field offices "for information linking Post to the IWW." BI agents found out that Post had met with George Andreychine, an IWW organizer and Lincoln Steffens, the journalist, sometime in 1919. The Bureau also learned that Post had "made a sworn statement attesting to the character of an anarchist named Turner" and had advised aliens arrested by the Justice Department "to institute habeas corpus hearings in order to get around the deportatcn orders." Five months later, on May 17, 1920, the New York field office sent an agent on an "unsuccessful search" of area bookstores for "Post's Ethical Principles of Marriage and Divorce." Another BI memorandum "erroneously stated that Post owned 50 percent of the New Republic. The agent had apparently confused the then defunct Public (a journal Post had edited some 20 years earlier) with the New Republic." The Bureau also kept tabs on Post after he left the Labor Department. Thus, in 1921, BI agents from the Boston field office "attended and reported on public lectures given by the former assistant secretary (at the Harvard Student Liberal

Club)." Post's biographer Dominic Candelore concludes that "though Hoover obviously believed Post to be a Communist sympathizer, no solid evidence could be found to discredit him." [18]

The lawyers who signed To The American People were subjected to similar scrutiny. Acting on instructions from Frank Burke, chief of the Bureau's Washington headquarters, and from GID chief Hoover, field agents investigated all twelve men. The reports included their dates and places of birth, marital status, religious beliefs, and education. More significantly, agents closely examined their political ideas, organization and party ties, and professional activities. [19]

On January 23, 1920, Hoover asked Military Intelligence to provide the Bureau with information about Swinkurre Hale's "past history and connections" because Hale had displayed "somewhat peculiar attitudes" when he represented the Communist party in January. Several weeks later, the Bureau's Boston office placed Hale's home in Scituate, Massachusetts, under surveillance because Hale had allowed a friend, Max Cohen, to stay there on a visit to Boston. The GID noted that Hale had "spent considerable time at the Soviet office in New York. . . (and) assisted in raising bail for James Larkin (an advocate of Irish independence) and Ben Gitlow (a member of New York's Communist Party)." Hale also appeared "voluntarily. . . in most of the cases against the aliens in the Union of Russian Workers, an anarchist organization." [20]

On October 16, 1920, "confidential informant 1080" reported to the Bureau's Pittsburgh office that "Hale is shortly to issue an article in 'The Nation'; which is a most libelous attack on the government and the Court of Common Pleas of Allegheny County, Pa." Division Superintendent R.E. Spencer brought a copy of the manuscript to the attention of Judge Sweringen of the Court of Common Pleas in an attempt to persuade state officials to indict Hale under an 1836 contempt law. In the article, Hale criticized the court's decision disbarring Jacob Margolis for defending members of the IWW and for his continuing support of the Union of Russian Workers. Although "Judge Sweringen seemed to be very gratified in receiving this advance information", Spencer was advised that "Hale could not come under the scope of the local statute." In January 1921, Hale applied for and received a passport to travel to England to visit with his children. On January 18, Hoover, noting that "Hale is divorced from his wife", requested W.L. Hurley of the State Department to "obtain information concerning his activities while abroad and the identities of his associates." [21]

On June 24, 1920, special agent E.A. Solanka wrote from St. Louis that Tyrell Williams "was well known for his socialist leanings." Solanka's sources reported that "Williams was always a malcontent seeking publicity. . . (and) every member of the bar knows this and considers his views indispensable (sic) by reason of his queer mental make up." Solanka also informed the Bureau that Williams had attended "the conference of the Committee of '48 in St. Louis December last year", but did not actively

participate "in the meetings". David Wallerstein, agent J.F. McDevitt reported confidentially, was "a democrat in politics and was formally connected with former Judge James Jay Gordon, a local judge "very prominent in democratic politics" who "left the bench 'under a cloud'." During the investigation, the Philadelphia office procured a letter written to Wallerstein which thanked him for defending Frank P. Walsh, who had represented Alexander Berkman and criticized the prosecution in the Mooney case. In a recent speech, the report continued, Francis Fisher Kane defended the New York socialists who had been expelled from the state legislature and told his audience that "curt (sic) on freedom and governmental violence may create harm." In an address to a group called "The Young Democracy" (referred to by the Bureau as a "radical organization"), Kane argued that the Supreme Court had "gone too far" in the Victor Berger case, and the law "has been made to apply to people who are not guilty of conspiracy, and that the laws against Bolshevism are unnecessary." [22]

On December 17, 1920, special agent M.J. Davis reported that Frank Walsh "has been looked upon as a sympathizer, financial contributor, speaker and power among the radical element of (New York City), if not throughout the entire country. . .and was actively engaged in an endeavor to obtain the release of Thomas E. Mooney, the convicted bomb thrower of California." Walsh, Davis noted, had been "mixed up in Sinn Fein activities in this locality, being attached to that faction which follows Eamon DeValera (President of the Irish Republic)" and had recently



addressed the Bronx Community Forum, where he "is alleged to have made favorable comments on Eugene V. Debs and to have said that 'The men who backed Harding intend to chain down American labor to its tasks'." Walsh's GID dossier concluded that he "is still active at the present time in revolutionary circles" and accused him of "'whitewashing' the crimes of the miners in Colorado" when he served on the War Labor Board.[23]

According to BI sources, Zechariah Chafee, Jr., an active member of the League for Democratic Control, was "busily engaged in pacifistic propaganda and in assisting in violating the Espionage and Selective Service Acts." The Bureau also asserted that Chafee had helped "Frankfurter, (Lawrence) Brocks and others in their unsolicited propaganda for the communists." In a June 1921 survey of "radical activities in (Boston area) public and private educational institutions", Division Superintendent William West wrote that Chafee was "prominently mentioned as a radical" and had written a "book entitled 'Freedom of Speech', in which he has paid particular attention to the decision of Federal Judge Anderson in the case of Colyer versus Skeffington." Chafee, the report continued, had also "personally appeared before the Joint Committee on the Judiciary of the Massachusetts Legislature and spoke against the enactment of (the Massachusetts Anti-Anarchy Act)." Roscoe Pound's dossier referred to his efforts to free Mollie Steimer and Jacob Abrams who had been convicted of violating the sedition act in 1918. Another accusation claimed that Pound was "anti-English and pro-German" during the war and, as dean of the law school, had hampered

efforts by students to procure their degrees "before going to war." [24]

Felix Frankfurter, because of his prominence as a progressive social reformer, attracted more attention from the Bureau than any other NPGI lawyer. Frankfurter and his mentor, Louis Brandeis, had mediated labor disputes in the New York garment industry before the war and, in 1917, Frankfurter had been appointed by President Woodrow Wilson as secretary and counsel to the President's Mediation Commission. The Commission, despite its successful settlement of disputes in the mining, lumber, and meatpacking industries, drew frequent criticism from business leaders. The Commission's investigation of the Tom Mooney murder trial was perhaps its most controversial assignment. Mooney, a prominent San Francisco labor leader, had been convicted of planting a bomb at a Preparedness Day parade in 1916 which killed 15 and wounded 40. Under Secretary of Labor William Wilson's supervision, Frankfurter prepared the Commission's final report which urged the President to ask the governor of California to grant Mooney a new trial because "a solid basis exists for a feeling that injustice was done." After reading news of this report, former President Theodore Roosevelt accused Frankfurter of excusing murderers, traitors, and anarchists who threaten "democracy and civilization". [25]

The Bureau of Investigation started to assemble its dossier on Frankfurter while he was serving as amicus curiae at the habeas corpus hearings in Boston. On May 17, the BI's Boston

office sent Hoover its first report which emphasized Frankfurter's involvement with the Amalgamated Clothing Workers of America. That organization, special agent Louis Nolan observed, "is to Massachusetts trade unions what the IWW is to the laboring classes of the West." Confidential information showed that the main goal of the ACWA "was to control the raw and finished products in the clothing industry, so that in the event of the radicals getting a foot-hold in this country, they would be able to have the clothing situation in their hands." Samuel Zorn, the ACWA's business manager in Boston and one of Frankfurter's associates, was "the most dangerous man in Boston" and had "nothing on Trotsky." Frankfurter, Nolan implied, was a member of the "[Boston] Jewish element furnishing the brains for the radicals and making the bullets which the ignorant of other nationalities fire." [26]

The report further developed Frankfurter's connections with other critics of government policy. On November 19, 1919, Frankfurter and members of the Harvard Liberal Club had urged normalization of relations with the new Soviet government as a means of insuring a lasting peace. In his report on that event, Assistant Superintendent William West found that these were the same people who had urged violation of the Selective Service acts and had assisted "violators of the Espionage Acts." West charged that Frankfurter had displayed "unpatriotic attitudes during the war" (as evidenced by Frankfurter's report on the McCreary trial and Roosevelt's reply) and was "still voicing opposition to the government - not to its prosecution of treasonable

offenders."[27]

On May 20 BI headquarters telegraphed Boston to ask whether Frankfurter and Chafee had volunteered to serve amicus curiae or had appeared at the request of Judge Anderson. GID chief Hoover, who attended the Boston habeas corpus hearings, initiated the request to find out what had motivated the two men to defend "communists". George Kelleher reported that "Frankfurter and Chafee may have been urged to appear by outside influences". The BI then asked the Boston office to investigate Anderson because of his "well-known sympathy. . . with the 'literal movement'." "His name", the GID later recorded, "is a household word among the reds," and his decision to grant the writs of habeas corpus "was evidently intended for propaganda - and has been seized upon by radical papers and organizations both here and abroad." The GID concluded that because Anderson had refused to prosecute participants in "German spy plots" when he was U.S. Attorney, he was unable to judge impartially the "facts" relating to the international communist conspiracy.[28]

A separate BI investigation of Representative Phillip Campbell, chairman of the House Rules Committee, turned up the fact that Frankfurter planned to attend the International Zionist Conference in London in July 1920. The House Rules Committee had recently completed an investigation into the administration of the immigration laws and had rejected a resolution to impeach Post. On June 5, 1920, special agent W.W. Grimes, who was later appointed special assistant to the Attorney General by Harlan

Fiske Stone, procured a copy of a telegram sent by Frankfurter to Campbell from the congressman's Washington office "under circumstances not necessary to divulge". In the telegram, Frankfurter urged Campbell to investigate the Justice Department's role in the deportation raids, particularly its use of agent provocateurs to arrange meetings to facilitate the arrests, but regretted that he would be unable to testify after June 14, 1920. Agent Grimes forwarded his copy of the telegram to GID chief Hoover, who then wrote W.L. Hurley at the State Department, seeking more definite information about Frankfurter's plans. Hurley advised Hoover that Frankfurter would sail from New York aboard the S.S. Rotterdam or the S.S. Lapland, and added that the State Department had issued a great many passports to persons planning to attend the Zionist conference.[29]

The Bureau completed its investigation of the NPGL only after the Senate Judiciary Subcommittee wrapped up its hearings into the League's charges in July 1921. Hoover, who believed that the NPGL lawyers were in "absolute ignorance of the facts," directed his employees to draft rebuttals of the attorneys' testimony and in a memorandum for his files observed that their testimony was "typical of the intense propaganda indulged in by their organization." The GID also became involved in an attempt by Austin W. Fox, a New York attorney and Harvard Law School graduate, to have Zechariah Chafee dismissed from the University because of his public criticism of the Justice Department. Upon request, Hoover supplied Fox with information to support his allegation that Chafee's charges had been reckless and untrue.

In addition, GID clerks collected newspaper clippings of the Harvard investigation which ultimately concluded that Fox's allegations were inaccurate and recommended that "no further action be taken".[30]

In addition to raising important legal and political questions, the deportation raids demonstrated the vulnerability of minority groups in the United States to arbitrary administrative action. And since the Justice Department had singled out Eastern European immigrants for deportation, many liberal clergymen believed the arrests were the result of intolerance, cultural hostility, and racial prejudice. Thus, on January 28, 1920, five Episcopal bishops criticized the raids in an open letter published in the New York Times and the New York Sun. "We. . . are moved to make an appeal to the people of the churches of America on account of certain measures. . . which threaten the basic principles of our Government. . . (and) (W)e urge the people. . . to use their influence for the return to that old faith in the fundamental principle of our civil liberty."[31]

In February 1920 the Interchurch World Movement (IWM) commissioned an investigation of conditions in Immigration Bureau jails where aliens were held while awaiting deportation, and the effects of the arrests on the individuals, their families, and their communities. The IWM, founded in 1919 to study pressing social and economic problems, chose Reverend Constantine M. Panunzio to head the investigation. Following an exhaustive

examination of all of the available evidence, including Labor Department case files, Panunzio concluded that "(c) nly a small number of these aliens could be classed as dangerous radicals. The simplicity of their testimonies, their obvious straightforwardness, testify to the fact that the majority of the persons. . . entertained no purpose hostile to the American government or the American people." The report, Derortation Cases of 1919-1920, remains the most accurate profile of the individuals arrested by the Justice Department.[32]

Within weeks of its initiation, Hoover learned of the IWM's inquiry. On March 27, 1920, special agent William Hazen informed GID chief Hoover that Panunzio was interviewing aliens in custody in Hartford, Connecticut. Hazen assured Hoover that "there is no cause whatever for any complaint amongst the arrested aliens confined in the Hartford County Jail." Aware that the IWM had recently called for a Congressional investigation of the BI and suspecting that the IWM'S religious affiliations merely masked its "ultra-radical" sympathies, Hoover directed the Bureau's Pittsburgh office to investigate the IWM. Special agent H.J. Lenon promptly filed two reports summarizing the history and activities of the IWM. On April 7, Lenon reported that "men with ulterior motives have crept into the movement", and were trying to influence "certain gullible preachers to appeal to the Labor Movement and to leaders of radicalism. . . in order to fill their pews and increase their collections." Some ministers, Lenon continued, have "fallen for the idea." Lenon feared that the churches would become "open forums for radicals of every hue and

color." The Reverend Luther Freedman, pastor of the Emory Methodist Episcopal Church, Lenon's sources reported, had invited Professor Harry Ward, president of the American Civil Liberties Union, to speak in what was "commonly believed" to mark "the beginning of a 'Free Speech' campaign. . . in defiance of all law." [ 33 ]

Lenon's second report, completed on May 6, outlined the IWM's ties with other "radical and anarchistic" organizations, primarily the ACLU. The IWM investigators, Lenon explained, were "more or less radical" and were the tools of William Foster (a leader of the steel strike), the "confessed syndicalist anarchist". Lenon listed the IWM's publications and summarized its platform and program. Lenon also included short biographies of Ward and Roger Baldwin, founder of the ACLU in the report. The investigation revealed that the ACLU and the IWM had cooperated with the Amalgamated Textile Workers, whose members had struck mills in Lawrence, Massachusetts and Paterson, New Jersey. The textile workers, Lenon advised the GII, were engaged in "fomenting a general strike in all the textile industry", and that the Bureau would find the IWM's report on the Lawrence strike "very interesting". Roger Baldwin, Lenon suggested, "(b)ecause of his education, training and executive ability. . . must be regarded only in the light of a dangerous man." [ 34 ]

Alluding to the IWM report on the 1919 Steel Strike which was highly critical of the steel industry as well as to its projected report on the deportation raids, Lenon concluded that



the IWM represented an "apparent utilization of religious movements to spread impossible and false theories and truths concerning conditions (in the United States)." In an attempt to measure the influence of the IWM, Lenon found that "it is hard to gauge when one considers these words and slogans" are sponsored by an organization representing practically all the Protestant denominations in the United States and "are mouthed and reported and given the stamp of approval of about 26,000,000 enrolled church members." [35]

In November 1920, the Federal Council of Churches of Christ in America (FCCCA) voted to reorganize the Council and incorporate the IWM. The FCCCA, founded originally in 1896 to unite all Protestant denominations in a body to promote moral reform throughout the United States, took up the work of the IWM. The FCCCA condemned the raids and called for an investigation of the Justice Department's role in the deportation process. In 1921, at the hearings before the Senate Judiciary Subcommittee, representatives of the FCCCA testified that "(t)he evils involved in the raids 'are of the first magnitude and should engage at once the attention of the public and Congress'." [36]

The GID investigation of the FCCCA began on December 12, 1920. Hoover telegraphed the Bureau's New York office, asking Division Superintendent George Lant to prepare a report on the general principles of the organization, the activities of the FCCCA and "individual and detailed statements upon . . . the various officers and persons prominent in the organization." The

FCCCA "is a very large and prominent organization", Lamb replied, and its administrative staff "includes the names of leading clergymen and laymen in the country." Lamb informed Hoover that he had instructed his agents to place an informer in the FCCCA to find out who was responsible for the Council's condemnation of the deportation raids. Lamb reasoned that the Council had been infiltrated by mean-spirited radicals because no organization whose members included John D. Rockefeller, Jr. and Charles Evans Hughes could have meant what it had said about the Justice Department. Only a few dissidents, probably of the "parlor bolsheviki" ilk, Lamb concluded, were responsible for the Council's criticism and he would transmit their names to the GID as soon as possible. Hoover also had the files of Military Intelligence and the State Department searched for evidence, but neither department turned up any information linking the FCCCA to subversive organizations.[37]

The tone of these investigative reports demonstrates not only the FI's extreme anti-radicalism but also its hostility toward ethnic and religious minorities. According to the Bureau's narrowly conceived standards, those who challenged the conservative political order in any way were somehow unpatriotic or "un-American". Thus, the Bureau's reports insinuated that Irish-Americans who favored Irish independence, Jews who advocated the establishment of a national homeland in Palestine, civil libertarians who defended the rights of dissidents, and anyone who argued that the United States should recognize the Soviet Union were engaged in "subversive" activities. Even the

most cursory analysis of BI investigative reports from the early post-war years leads to the conclusion that the Bureau thought of itself as a political police whose mission was not limited to purely criminal investigations.[38]

It would be a mistake to conclude that because the Bureau failed to silence its early critics, that its investigations were unimportant or irrelevant. As head of the GID, Hoover learned that Congress and the President would tolerate the Bureau's anti-radical activities as long as it appeared that its efforts were limited to silencing dissident voices. At the same time, Hoover came to understand the importance of secrecy and confidentiality. As head of the GID, Hoover realized that if the BI engaged in constitutionally questionable activities, these investigations had to remain secret. In view of these restraints, it is no wonder that the BI did no more than collect information about its distinguished critics. Yet, however halting and inconsequential these investigations might have been, an important precedent had been established. For the next fifty years, fear of adverse publicity continued to be an important, if not central, element in the formulation of FBI internal security policies. Once the Bureau concluded that surveillance of a particular individual group was "safe" and likely to turn up intelligence information, questions of policy and law were largely ignored.[39]

Bureau secrecy had another important consequence. The Bureau's ability to keep the lid on its illegal surveillance activities made the task of its critics more difficult. Since Congress, the Courts and the President were never fully aware of the dramatic growth of BI intelligence operations, fundamental constitutional problems went unsolved. Thinking that Bureau investigations were limited to possible violations of federal laws such as the deportation statutes, federal officials never recognized the scope of BI surveillance activities or appreciated the dimensions of the problem. Thus, when called upon to balance the nation's legitimate security needs with individual rights, federal authorities invariably opted for order, not liberty. Nevertheless, sustained public criticism of the BI's abuse of authority during the last year of the Wilson Administration and throughout the Harding era compelled Attorney General Harlan Fiske Stone to limit the Bureau's investigative authority shortly after taking office in May 1924. These attempts to redefine the BI's authority through the courts, Congress, and finally the executive will be examined in the next chapter.[40]

## NOTES

1) National Popular Government League, To the American People: Report Upon the Illegal Practices of the United States Department of Justice (Washington, 1920); Constantine M. Panunzio, Persecution Cases of 1919-1920 (New York, 1920); William Preston, Aliens and Dissenters (Cambridge, 1964), 220-237; Robert K. Murray, Fed Scare (Minneapolis, 1955), 239-262.

2) David Williams, "The Bureau of Investigation and Its Critics, 1919-1921," Journal of American History; Athan Theoharis, "Review of Frank Donner, Age of Surveillance," Political Science Quarterly (Summer 1980), 699-700. See also, Frank Donner, Age of Surveillance (New York, 1980), 35-51; Murray, Fed Scare, 239-262; William Preston, Aliens and Dissenters, 208-272; Max Lowenthal, FBI (New York, 1950), 130-260.

3) "Charges of Illegal Practices of the Justice Department", Senate Committee on the Judiciary, Hearings, 66th Cong., 1 Sess. (1921), 573; The New York Times (January 5, 1920), 10; Jerold Auerbach, Unequal Justice: Lawyers and Social Change in Modern America (New York, 1978), 130.

4) The most complete account of criticism of the deportation raids is William Anthony Genqareilly, "Resistance Spokesmen: Opponents of the Red Scare, 1919-1921" (unpublished Ph.D dissertation, Boston University, 1972). NPGI literature, press releases and legislative proposals can be found in several manuscript collections. See Judson King Papers, Library of Congress, Washington, D.C.; Zechariah Chafee, Jr. MSS, Harvard Law School Library, Cambridge, Massachusetts; American Civil Liberties Union Archives, Princeton University, Princeton, New Jersey.

5) The Survey published Kane's letter of resignation and Palmer's reply in their entirety; see The Survey 43 (January 31, 1920), 502-04. Hoover to Caminetti, 12/19/19, BI file OG 368487; Hoover to Caminetti, 1/2/20, 1/7/20, 1/20/20; Caminetti to Hoover, 1/22/20, Department of Justice Records, National Archives, Washington, D.C., Record Group 60, 54809/general.

6) Ex Parte Jackson, 263 Fed. 110 (1920); BI file CG 147403.

7) Ex Parte Jackson, 263 Fed. 110, 113. Also see, "A Federal Judge Speaks Up", The New Republic 22 (March 31, 1920), 135; Arnon Gutfield, "The Ves Hall Case, Judge Bourquin, and the Sedition Act of 1918", Pacific Historical Review 37 (May 1968), 163-78; Paul Murphy, World War I and the Origin of Civil Liberties in the United States (New York, 1979), 198-203.

8) BI file OG 291596, 5/5/20; A.B. Ccxe to Ecover, 6/9/20, BI file CG 291596; EI file ES 195397, 7/7/20.

9) Liva Baker, Felix Frankfurter (New York, 1969), 87-98, describes Frankfurter's role during the habeas corpus hearings. Chafee explained his participation in the proceedings to the Senate Committee on the Judiciary on January 25, 1921; see, "Charges of Illegal Practices of the Justice Department", Hearings, 165-205.

10) Boston Globe, April 7, 1920, 1; Boston Post, April 13, 1920, 1. Because I have been unable to locate a copy of the transcript of the hearings, I have been forced to rely on the portions of the testimony that were reprinted in the NFGL's, To The American People: Report Upon the Illegal Practices of the United States Department of Justice (Washington, D.C, 1920), 37-55.

11) Cclver v. Skeffington, 265 Fed. 17 (1st Cir. 1920); quoted in Sidney Howard, "Judge Anderson's Decision", The Survey 44 (July 3, 1920), 489. Hoover's reaction to the the decision is particularly interesting. After Judge Anderson accused the Justice Department of using spies and undercover agents to operate "some part of the Communist Party", Hoover told reporters that the Judge's statement was an "unjustifiable misconception of the facts" and was the "construction which 'the most perverted mind' could not put upon the evidence presented at the hearings." Boston Globe, April 21, 1920. David Williams, "Swing the Wind", discusses Bureau investigations prior to the raids, presenting

evidence not available during the habeas corpus hearings, and substantiates Anderson's position that the EI's undercover agents were involved in party activities. In 1922, the U.S. Court of Appeals reversed Anderson's decision, ruling that Congress had empowered the Secretary of Labor to determine which organizations came within the scope of the 1918 Immigration Act. 277 Fed. 129(1st Cir. 1922). The case did not reach the Supreme Court for review. Anderson to Walsh, 4/26/22, box 278, Thomas Walsh papers, Library of Congress, Washington, D.C.

12) Gengarelly, "Resistance Spokesmen", 202-03.

13) "Charges of Illegal Practices", Hearings, 270-71.

14) Jerold Auerbach, Unequal Justice, 106; Chafee, Free Speech, 554. Commenting on two deportation cases involving members of the IWW, the New York Law Journal warned: "Lawyers especially may well consider most seriously whether they should give legal aid to such dangerous adversaries of our government and of our fundamental rights and liberties." New York Law Journal 61(April 18, 1919), 224. Apparently GID chief Hoover shared the bar associations' intolerance of attorneys who disagreed, or who defended those who disagreed, with official policies. On December 4, 1919, Hoover wrote to John Creighton that Issac Shorr, a New York lawyer who had criticized the November 1919 raid on the offices of the Union of Russian Workers in New York City, "ought to be 'disbarred from further practice before immigration authorities.'" Quoted in Donald Johnson, Challenge to American Freedoms: World War I and the Rise of the



American Civil Liberties Union (Lexington, 1963), 138. For a representative expression of the legal profession's intolerance of dissenters' right to freedom of speech, see John Wigmore, "'Abrams v. U.S.': Freedom of Speech and Freedom of Thuggery in Wartime and Peace Time", Illinois Law Review (March 1920), reprinted in "Charges of Illegal Practices", Hearings, 115-29. NPGL, To The American People, 3-8. Also see a letter written by a member of the Montana bar criticizing the informal sanctions brought to bear against lawyers who defended IWW members during and after the war. 110 The Nation (February 14, 1920), 202.

15) Hoover to Ahern, 5/8/20, BI file CG 379228.

16) Kemon report, 5/19/16, BI file OG 379228.

17) Kemon report, 6/2/20, BI file CG 379228.

Kemon report, 6/9/20, BI file CG 379228; John Lombardi, Labor's Voice in the Cabinet: A History of the Labor Department from its Origin to 1921 (New York, 1942), 344-45.

18) Dominic Candeloro, "Louis F. Post and the Red Scare of 1920", Prologue 11 (Spring 1979), 46-49.

19) BI file OG 379228. See also index under the name of each of the twelve lawyers who signed the Report; Bureau of Investigation, investigation files, 1908-1922, general index.

20) BI file OG 379228; Hoover to Churchill, 1/23/20; Churchill to Hoover, 1/31/20; BI file BS 213201; West report, 2/14/20 BI file BS 202600-1622.

21) Spencer to Hoover, 10/16/20, BI file BS 213251; Davis report, 12/17/20, BI file BS 213251; Hoover to Hurley, 1/18/21, BI file BS 213251. Swinturne Hale, "U.S. Steel vs. Margolis", 111 The Nation (November 3, 1920), 498. Hale also accused the Justice Department of operating "a criminal espionage system which has come to be part of modern American institutions." Hale asserted that the department had illegally tapped telephones and intercepted mail to gather evidence later used against Margolis during the disbarment hearings.

22) BI file OG 379229; Sclanka report, 6/24/20, BI file OG 379228; McDevitt report, 12/14/20, BI file OG 379228. In December 1918, Victor Berger, the editor of the socialist daily newspaper, The Milwaukee Leader, was convicted of violating the Espionage Act for publishing several anti-war editorials. A month earlier, however, Berger was elected to Congress from the Fifth District of Wisconsin. Twice the House of Representatives refused to seat him. In January 1921 the U.S. Supreme Court overturned Berger's conviction, ruling that the trial judge, K.M. Landis, was "disqualified by his prejudicial conduct before the trial." See Chaffe, Free Speech, 246-250.

23) BI file 379223; Davis report, 12/17/20, BI file BS 213251.

24) BI file OG 379228; Burke to Kelleher, 5/20/20, BI file 120964; Memorandum for Mr. Hoover, 6/15/20, BI file OG 379228; West report, "Radical Activities in Public and Private Educational Institutions and Organizations", 6/8/21, BI file BS

202600-1622.

25) Baker, Frankfurter, 58-84. Hoover filed a copy of Roosevelt's letter in May 1920 in Frankfurter's dossier, BI file OG 120964. On December 17, 1920, special agent M.J. Davis reported that Frankfurter "undoubtedly accepted" former President Roosevelt's "characterizations as a Bolshevist and Anarchist as more complimentary than defamatory." Davis report, 12/17/20, BI file BS 213251.

26) Nolan report, 5/17/20, BI file CG 120964. The anti-semitic overtones in this statement were not unique. In reports about Frankfurter and his involvement in the ACWA, agents placed the blame for strikes and worker militancy on the activities of "Hebrew agitators". In the same report, an agent described the membership of the ACWA as "50% Jews, the balance being Lithuanians, Italians, and Poles, with but a small percentage of Americans." The question of whether the ethnics had themselves become citizens of the United States does not seem to have bothered the BI agent. Jewishness easily translated into radical or "un-American" in the minds of many Bureau employees. In a report in BI file OG 366194, Hoover ordered an investigation of Eamon DeValera, President of the Irish Republic who was a citizen of both the United States and Ireland. DeValera was in the United States raising funds for the cause of Irish independence. Hoover wanted to find out if reports that DeValera was "a Spanish Jew" were true. DeValera's dossier was kept in a "confidential file" which may have been in the "personal and

confidential files" destroyed in May 1972 after FBI Director Hoover died. See Athan Thecharis, Spying on Americans, 157; Ungar, FBI, 496.

27) Nolan report, 5/17/20; Kelleher report, 5/26/20, BI file OG 120964.

28) Kelleher report, 5/26/20, BI file 120964; Burke to Kelleher, 5/20/20, BI file OG 120964; see George Weston Anderson's dossier, BI file OG 379228.

29) Grimes report, 6/5/20, BI file OG 120964; Hurley to Hoover, 5/11/20, BI file OG 120964; Baker, Frankfurter, 83-84.

30) BI file BS 209115. See Arthur Sutherland, The Law at Harvard: A History of Man and Ideas (Cambridge, 1967), 254-58, for an account of the incident. Also see Jerold Auerbach, "Patrician as Libertarian: Zechariah Chafee, Jr. and Freedom of Speech", New England Quarterly 42 (December 1969), 511-31; quoted in Auerbach, "Patrician", 524-25. Also see, Peter Irons, "'Fighting Fair': Zechariah Chafee, Jr., the Department of Justice, and the 'Trial at the Harvard Club'," Harvard Law Review, 94(April 1981), 1205-1236.

31) New York Times, January 28, 1920, 2; New York Sun, January 28, 1920, 1.

32) IWM, Report Upon the Steel Strike of 1919 (New York, 1920), 3-18. Panunzio to Ames, 6/19/20, BI file ES 204048; Justice Department to Panunzio, 6/30/20, BI file BS 204048. C.M.

Panunzio, The Deportation Cases of 1919-1920 (New York, 1920). The report is reprinted in "Charges of Illegal Practices", Hearings, 311-41.

33) Hazer report, 3/27/20, BI file OG 341677; Lencn report, 4/7/20, BI file BS 207588.

34) Lencn report, 5/6/20, EI file ES 207588. On December 23, 1920, agent Edward Anderson investigated Panunzio and interviewed a Catholic priest and the postmaster and police chief of White Plains, N.Y. Because Anderson "did not deem it advisable" to interview individuals more intimately acquainted with Panunzio, the investigation "was discontinued pending the receipt of further instruction." Anderson report, 12/30/20, EI file BS 207588.

35) Lencn Report, 5/6/20, EI file ES 207588; IWM, Report Upon the Steel Strike of 1919 (New York, 1920). The Report claimed that the Justice Department unduly relied on "cooperation with corporations' secret services (i.e., private detectives and labor spies)," agencies, the IWM concluded, that "do not seem to serve the best interests of the country." Report Upon the Steel Strike, 18.

36) Quoted in Lowenthal, FBI, 265. See New York Times, November 6, 1920, 12, concerning the reorganization of the IWM and the FCCCA.

37) Lamb to Hoover, 12/24/20, FI file ES 204048; Hoover to Grimes, 12/28/20, BI file ES 204048.

38) This suspicion of religious and racial minorities could explain why the Bureau employed very few Jewish and no black special agents until the 1970's. See Ungar, FBI, 327; Donner, 120-122.

39) In November 1975, former assistant chief of the FBI, William Sullivan made the following deposition: "During the ten years that I was on the U.S. Intelligence Board. . . never once did I hear anybody, including myself, raise the question: 'Is this course of action which we have agreed upon lawful, is it legal, is it ethical or moral?' The one thing we were concerned about was this: will this course of action work, will it get us what we want, will we reach the objective that we desire?" Athan Theoharis, Spying on Americans, 229-30.

## Chapter V

### Resistance and Resolution:

#### Reform of the BI's Intelligence Operations, 1920-1924

Broad criticism of the deportation raids necessitated official review of the federal government's anti-radical programs. As Zechariah Chafee observed: "Unless the methods used by the Justice Department are severely condemned by Congress and the American people, they will be repeated in future emergencies." And, since the BI had played a leading role in formulating and implementing the Justice Department's internal security policies, the debate that followed addressed again many of the same constitutional and administrative questions left unanswered by Congress and the Attorney General in 1908 when the Bureau was first organized. And there were many issues. Could the federal government prevent the BI from violating the rights of individuals without placing debilitating restrictions on the Bureau? If rights were violated as they were in the deportation raids, how could persons seek redress? Were the Attorney General and the BI chief legally responsible for BI violations of individual rights? If they were, could they be held personally liable for compensatory and punitive damages? Did the Bureau have the authority to investigate non-criminal, political

activities? If not, when could the Bureau initiate an investigation of possible criminal conspiracies? Was it legitimate to scrutinize revolutionary organizations whose goal was the overthrow of the existing economic and governmental institutions? Could the Bureau's investigative authority be effectively controlled without compromising admittedly sensitive information? If so, would this be accomplished through administrative reform or legislative measures? And, finally, would Congress and the President agree on a particular program to achieve an elusive balance between order and liberty?[1]

Most reformers understood that solving the problem of illegal surveillance and developing a policy on domestic intelligence would not be easy. A conservative Congress and the security-conscious Wilson and Harding Administrations were not inclined to support any legislative program which would have restricted the government's power to investigate "communist subversion." During the early 1920's, for example, Congress enthusiastically embraced the National Origins Act which set discriminatory quotas on immigration from eastern and southern Europe. Many Americans automatically assumed that radicalism was part of the racial heritage of immigrants from these areas. At the same time, the Harding Administration promoted programs such as the "American Plan," a blueprint for corporate unionism and the open shop. The Harding Justice Department also employed the BI to bust unions, break strikes and intimidate militant labor organizers. These obstacles, however, did not prevent a series of vigorous judicial and legislative challenges, directed in the



first instance against A. Mitchell Palmer and the EI.[2]

From early 1920 through March 1921 Attorney General Palmer refused to entertain the possibility that the Red Raids had in any way violated the rights of radical aliens who had been targeted for deportation. "I apologize for nothing that the Justice Department has done in this matter," Palmer insisted, "I glory in it. I point with pride and enthusiasm to the results of their work; and if. . . some of my agents out in the field, or some of the agents of the Department of Labor, were a little rough or unkind, or short or curt, with these alien agitators whom they observed seeking to destroy their homes, their religion and their country, I think it might well be overlooked in the general good to the country which has come from it." Attorneys for several victims of the raids, realizing that a fair departmental review of their evidence was impossible, and having won the first round in some of the habeas corpus hearings, brought suit against government officials for false arrest and wrongful death. Since this was the first time that persons had filed for damages for wrongs stemming from EI operations, decisions in these suits would determine whether illegal EI activities were actionable.[3]

In the first of three suits, Max Helder, a Washington, D.C. waiter and an official in the Hotel and Restaurant Workers' Union, sued EI chief William Flynn and Lawrence O'Dea, an agent with the Railway Administrator for false arrest and for conducting warrantless searches at his Washington flat. On June

13, 1919, eleven days after anarchist bombs exploded at the homes of several prominent government officials, including Attorney General Palmer, O'Dea arrested Holder after O'Dea's brother, Steve, informed him that Holder had threatened to bomb the Raleigh Hotel if the management did not reach a settlement with striking workers. After the Justice Department expressed an interest in questioning Holder in connection with the June 2nd bombings, O'Dea turned Holder over to the D.C. police who held him for a week at their First District Station House. Later that same day, O'Dea broke in to Holder's apartment, searched the premises and seized letters and personal documents and papers. No warrant was ever issued for Holder's arrest or for the search of his apartment. On June 21, unable to produce any evidence implicating Holder in the bombings, the police released Holder.[4]

In a complaint filed on July 10 with the Supreme Court of the District of Columbia by his attorney, Jackson Balston, Holder alleged that following his arrest, he was confined in a room infested with vermin, was not given sufficient food or water and was refused permission to contact his family or friends. As a consequence, "(Holder) was compelled to undergo and underwent great mental suffering, anguish, humiliation and bodily pain and suffering. . . (and) lost the employment in which he was engaged." Balston set forth damages of \$25,000. On August 5, O'Dea and Flynn pleaded not guilty. During the January 1920 trial, chief Flynn denied any personal or FBI involvement in Holder's arrest and subsequent incarceration. Flynn's testimony

contradicted that of a D.C. police inspector who claimed that Holder "was being held by orders of the Department of Justice." Flynn explained that O'Dea was acting on his own and that he was not, nor had he ever been an employee of the Justice Department. On January 7, the jury dismissed the suit against Flynn, but awarded Holder \$400.00 in compensatory damages from O'Dea. A year later, Judge Walter McCoy dismissed the defense motion for a new trial which claimed that the verdict was contrary to the law and the weight of the evidence.[5]

Encouraged by the Holder decision, attorneys for the widows of two men who had died while in the custody of the Justice Department and the Immigration Bureau filed suit against the Attorney General, the Commissioner General of Immigration and several others for their role in the arrest and detention of the deceased. Because these cases could help to establish an important precedent (the decision in the Holder case was still quite limited), they assumed an importance larger than specific issues involved. Since the beginning of the First World War, no government official had been reprimanded, fined, or imprisoned for violating either the civil or political rights of dissidents. The few judges who had found for defendants in sedition or espionage cases did not rule that they were entitled to compensation even if the government had arbitrarily deprived defendants of rights before, during, or after the arrest. Rulings favorable to the plaintiffs in these two cases would demonstrate a new willingness on the part of the courts to hold government officials accountable for policies or actions that

violated the constitutional rights of the accused. On the other hand, if the court's found for the defendants, policy makers would be free to ignore "due process" and to conduct political investigations without regard to constitutional values.[6]

On February 18, 1921, Walter Nelles, a former counsel to the National Civil Liberties Bureau who had represented several individuals charged with sedition, filed a complaint for Mrs. Maria Salsedo in the Federal district court in New York City. Nelles alleged that Attorney General Palmer, BI chief Flynn, district superintendent George Lark, and special agents Charles Skully and John Francisco were responsible for her husband's death. On March 7, 1920, Skully and Francisco had taken Salsedo into custody, without a warrant or even a specific charge against him, and brought him to the BI's Manhattan headquarters on the 14th floor of 15-21 Park Row. Salsedo, a Brooklyn typesetter who had emigrated from Italy in 1911, was employed at a print shop owned by Robert Elia. The BI had ascertained that type-face found at Elia's shop matched the peculiarities found on an anarchist throwaway, "Plain Words", pieces of which had been found near Attorney General Palmer's home following the June 1919 bombing.[7]

From Washington, chief Flynn ordered Salsedo and Elia held for questioning. What transpired over the course of their detention which lasted about two months has remained a matter of dispute. BI officials consistently maintained that Salsedo and Elia voluntarily turned state's evidence, requested that the BI

provide them with protection and a suitable place to live until the case was resolved. According to this story, the New York office allowed the two men to retain legal counsel, receive visitors, take walks, and were adequately fed and enjoyed comfortable sleeping quarters. In early May, Salsedo fell into a deep depression. Although officials admitted that he was visibly disturbed, they characterized his condition as unrelated to his unofficial incarceration. Salsedo, the official explanation continued, suffered from acute anxiety because he feared a long prison term. "He was never mistreated at any time", the FI official report later stated, "and never struck, intimidated or threatened." [8]

In any event, Salsedo's depression worsened. Elia later confirmed that Salsedo "would lie groaning and commenting all night. He complained continually of pains in his stomach and head. He was always nervous. He refused absolutely to eat." Around 4 a.m. on Monday May 3, Salsedo leaped from the window of the room he shared with Elia, falling fourteen stories to his death on the street below. [9]

Despite FI official denials, the dark side of Salsedo's confinement was the basis of Maria's suit against Falmer and others. Nelles argued that Salsedo was the victim of often brutal mistreatment, at times so cruel that Salsedo had no other way out than to take his own life. Nelles brief set out graphically the treatment he received while in the FI's custody: The FI agents "lawlessly and wrongfully arrested and seized his

body and held him in confinement and captivity without process of law and against his will; they assaulted him; they inflicted upon him blows and grievous bodily injuries; they subjected him against his will to repeated interrogations and inquisitions. .

. tortured the said Andrea Salsedo mentally by the following acts of conduct; they threatened to inflict upon him grievous physical injury and death; and to cause his prosecution, conviction and imprisonments for a crime of which he was innocent; and they made and broke repeated promises to set him free; they caused him to believe and he did believe that they had present power and ability to inflict upon him the said wrongs with which they threatened him and they caused him to be and live in constant fear."[ 10 ]

In a statement drafted for the Sacco-Vanzetti defense committee (the two men were then on trial for murder in Massachusetts), Elia described the FI's treatment of Salsedo, the only time he did so under oath. On March 8, the day after Salsedo's arrest, BI chief William Flynn traveled from Washington to New York to supervise the interrogation of Salsedo. Following the first session with Flynn and several other agents, Elia recalled: "Salsedo's face and forehead were bruised from the beating he received. He had red spots and scratches on his cheeks and temples and his eyes were vacant. He was depressed. I never saw him normal during all the times after that we were together."[ 11 ]

Almost forty years later, in an interview with the journalist Fred Cook, Richard Rohman verified Elia's account. Rohman, then a reporter for the socialist daily newspaper, The New York Call, visited the BI's Park Row headquarters in an effort to gain an interview with Elia and Salsedo. As he entered the outer office, Rohman "became aware of cries coming from an inner office. As I walked on, I could hear these terrible cries, subhuman cries of a man in terrible pain. Suddenly I barged into an inner room from which the cries were coming. Salsedo was slumped in a chair, and he looked as if every bone in his body was broken. Two of three agents were standing over him, hitting him with blackjacks." [12]

On February 24, 1921, the defendants demurred to the complaint "upon the ground that it did not state facts sufficient to constitute a cause of action." Four days later, federal district judge Martin Manton dismissed the suit on those grounds and ordered an investigation of Nelles because he had submitted an affidavit which accused federal agents of misconduct. Manton declared that "(p)ublic officials should not be subject (to slander) so loosely constructed." Several weeks later, assistant U.S. Attorney Francis Coffey, who had led the investigation, advised the Justice Department against charging Nelles with perjury. [13]

Nelles appealed Manton's decision and on December 14, 1921, the Circuit Court of Appeals affirmed, 2-1, Manton's judgment. In his majority opinion, Judge Henry W. Rogers ruled that the

plaintiff had to show that the defendants' actions were the immediate cause of Salsedo's suicide, not merely a remote or proximate cause. "It seems to this court that a new and independent cause intervened between the wrong and the injury, and the suicide was not the natural and probable consequence of the wrongful acts of the defendants and was not one which the defendants ought to have foreseen in the light of the attending circumstances." [14]

In his dissent, Judge Julius M. Mayer asserted that the case should be tried and the facts left to a jury to decide. The common law required proximate, not immediate, cause and given the opportunity the plaintiff might be able to show that the suicide was indeed the natural result of the defendants' actions. "If a man is confined against his will for over two months and continuously and grievously injured, and, at the same time continuously threatened with death," he queried, "can it be said as a matter of law, that the wrongdoer should not have foreseen the infliction of such wrongs continuously over a long period of time might naturally and probably lead to loss of mind and that self destruction might follow?" Salsedo and her attorneys decided against an appeal to the Supreme Court. [15]

In the final suit brought against government officials for actions related to the FBI's anti-radical campaign, Selig Brez, attorney for Mrs. Mary Marcinek, filed a complaint in the Supreme Court of the District of Columbia, alleging that her husband Michael, died of pneumonia as a result of a conspiracy



between the Attorney General and the Commissioner General of Immigration. On January 3, 1920, Passaic, N.J. police officers, acting on the orders of the Justice Department, arrested Marcinak at 1 a.m. at his home on Jackson Street. According to the brief, the police showed neither an arrest or search warrant, seized Marcinak's papers including books, letters, pamphlets and other personal documents, and "dragged (Marcinak) out of his house, without giving him an opportunity to provide himself with proper clothing." [16]

Several hours later, Immigration Inspector William Fader questioned Marcinak and ordered Marcinak deported for his "membership" in the Communist party. Special Agent-in-Charge (SAC) Frank Stone later reported that the BI first became aware of Marcinak's "party affiliation" in December 1919 after Passaic police turned over to him a membership list taken from a New York party organizer arrested for violation of state seditious laws. "My information at the time was that (Marcinak) had actually organized and was one of the most active spirits in the Communist party.", and for that reason, Stone had signed an affidavit for a warrant for Marcinak's arrest. [17]

From the time of his arrest until his death several weeks later, Marcinak steadfastly denied party membership. In a deposition taken by the New York attorney Charles Recht, Mrs. Marcinak testified that Michael had been a member of the Polish Socialist party. Information in the BI's own files and available to field agents at the time of Marcinak's arrest confirms her

version of the story. Contrary to Frank Stone's 1921 report prepared for the defendants, Marcinak's name appears only once in the EI files and that time on a Communist Party membership roster prepared by Stone in December 1919 in anticipation of the mass arrests in early January. It did not appear on a separate list of "active" party members in the Passaic area.[18]

On January 3, the Immigration Bureau transferred Marcinak to Ellis Island aboard the steamer Thomas C. Millard, to await the final deportation orders. Mary Marcinak located her husband's whereabouts on January 5 and visited him several times, finding that Michael was kept in a room with 500 others, "which was inadequately heated and ventilated and with an insufficient supply of blankets." On January 16, Immigration officials sent Mary word that Michael had contracted pneumonia and had been hospitalized. On Monday, January 19, Marcinak died.[19]

Michael Marcinak's arrest and subsequent death left the family without any source of income. Prior to his arrest, Marcinak had worked at a Passaic textile mill where he earned about \$30.00 a week. His wife worked the night shift at a worsted spinning mill in Garfield, N.J., but was forced to leave her job following Marcinak's arrest in order to take care of her two children, Cheslov, 3, and Anna, 1. The three survived for a year on money given to them by the Workers' Defense Council and the Passaic Overseer of the Poor. In the suit, Mrs. Marcinak claimed damages of \$350,000 for her husband's arrest, death, and loss of income.[20]

On March 3, 1921, attorneys for Palmer and Caminetti filed a motion to quash the writs and vacate charges filed against the defendants. The suit languished in the court for the next five years, and finally on September 30, 1926, the court dismissed the suit without proceedings.[21]

Even before the courts threw out the Salsedo suit on technical grounds and failed to hear preliminary arguments in the Marcinak case, civil libertarians expressed doubts that the federal law afforded individuals sufficient protection against official actions that deprived persons of their constitutional rights. Following the deportation raids, Zechariah Chafee asserted that "the extremes to which partisan fervor had led some prominent officials can only be accounted for by their knowledge that no legal means are available against them." Speaking to this same point, Ernst Freund wrote: "The danger to (American) institutions from anarchistic doctrines seems remote and almost visionary; the danger from an undue growth of administrative power is much more real. As a student of administrative law for over 25 years I believe that there is no doctrine that deserves to be more vigorously enforced than the doctrine that in the furtherance of public interests administrative discretion counts for more than the law." In a speech delivered before the Maryland Bar Association, and entered into evidence during the subcommittee hearings, John Lord O'Brian, the former Justice Department official in charge of security investigations, argued that "(a)dmistrative government is not responsible government." "(I)t is not the work, the zeal, or the errors of public

officials now in office that matters so much," he warned his audience, "it is the fact that without remonstrance we are tolerating practices and lending the countenance of approval to theories of law which in the long run can only have the result of undermining the judicial power, the last repository of liberties in America." [22]

In early 1921, in a letter to the Senate subcommittee investigating the NPGL's charges, Harlan Fiske Stone, then dean of the Columbia Law School, explained why he supported legislation to protect Constitutional rights from official lawlessness: "It is inevitable that any system which confers upon administrative officers power to restrain the liberty of individuals without safeguards substantially like those which exist in criminal cases and without adequate authority for judicial review of the action of such administrative officers will result in abuse of power and in intolerable injustice and cruelty to individuals." Judson King, secretary of the NPGL, agreed with Stone and in a separate statement prepared for the subcommittee wrote: "The present attorney general will soon relinquish office, but the precedents he set up will remain. Shall it be said that Congress, by its silence, approves the precedents and sanctions the policy of the law enforcing arm of government to itself become lawless?" [23]

Some members of Congress shared this same concern. A little over a month after the Red Raids, on February 23, 1920, Representative Walter Huddleston, a Birmingham, Alabama Democrat,

introduced legislation that would have redefined official malfeasance. Huddleston, an outspoken defender of the rights of labor, condemned the deportations arrests as an illegal attempt to "intimidate workers as a class", undertaken "to strike terror into the heart of every foreigner in this country and to make him feel that he dare not claim higher wages or to take part in a strike for fear he would be sent back to some bloody land where his life would be forfeited." The bill proposed that any official of the federal government who willfully deprived or attempted to deprive "any person of his lawful freedom of speech, of press, of assemblage, or of due process of law" be dismissed from office and face a maximum ten years and \$10,000 fine. Believing that the January raids resulted from an absence of checks on administrative usurpation, Huddleston recommended that malfeasance should also include any attempt to "intimidate, put under duress, spy upon, eavesdrop, watch, follow or pursue any person who is in the exercise of his lawful rights. . . (or) willfully censor, expose, withhold, delay, destroy or deface any first class mail matter or any mail matter of any class." If enacted, the legislation would prevent the administration from pursuing policies that threatened to violate individual rights. Despite the need for reform of administrative procedure, the House Judiciary Committee did not hold hearings on the Huddleston measure and the proposal died in committee.[24]

On April 13, 1921, several weeks after the Senate Judiciary Subcommittee completed its inquiry into the NEGL'S charges, Senator William Borah introduced a bill which proposed to protect

Constitutional privileges and immunities. Drafted by Alfred Bettren, a former special assistant to Attorney General Thomas W. Gregory, the bill provided for a maximum 5 year/\$10,000 fine for any government official who "injures, oppresses, threatens, or intimidates any person in the free exercise or enjoyment of any right or privilege secured or guaranteed to him by the Constitution." A similar penalty would be levied against any official who searched or seized property or entered into a "house, office, room, or any premises of any person" without a proper judicial warrant, or who obstructed, interfered or broke-up a meeting." Upon introducing the bill, Borah declared that unless the Congress acted positively to protect the rights of all persons, the Constitution itself would be placed in jeopardy. "There is no one whose duty it is to be more scrupulous of the obligations of the Constitution or more regardful of the Constitutional rights of the citizen than the officer intrusted for a brief season with great authority. . . Obedience to the law is the primal pillar upon which free institutions rest. When this spirit is broken down, law itself becomes in a sense a mockery." [25]

Supporters of the Borah bill hoped that the Senate Judiciary Committee would adopt, without further delay, a report prepared by Senator Thomas Walsh. During the war, Walsh, a former U.S. Attorney from Montana, had been a strong supporter of the Wilson Administration's efforts to suppress the IWW and other radical organizations. Following the deportations raids, his views changed. The report found that the Justice Department had

repeatedly violated the constitutional rights of the accused and had illegally intervened in the deportation process. In his introduction, Walsh made it clear that he had no sympathy for those who "rancorously array themselves against all government and cultivate faultfinding with its ministers as a fine art." Nevertheless the evidence persuaded him that the "great majority of those arrested, yea, even of those deported, were perfectly harmless, included individuals, many of them unable to speak a word of English." Walsh recommended that Congress amend the Immigration law "to make [it] conform to the plain mandate of the Constitution." Walsh also recommended that the new law should specifically exclude the Justice Department from intervening in the administration of the Immigration law to prevent future administrative confusion. The tone of the report indicated that liberals who had supported political repression during the war and the early post-war period were now ready to embrace the libertarian position that they had previously condemned as naive or unpatriotic.[26]

Although the NEGL and the ACLU picked up the support of Walsh and other like-minded senators, several prominent members of the Senate Judiciary Committee continued to support the administration's position and bottled up Walsh's report in committee for almost two years. The most influential was Thomas Sterling of South Dakota, sponsor of the peacetime sedition bill that the Senate had approved in January 1920. As chairman of the subcommittee which investigated the NEGL's charges, Sterling prepared a report which endorsed the Attorney General Palmer's

argument that the department's policy was dictated by the overriding need to protect the nation's internal security. Palmer, appearing before the Judiciary subcommittee, testified that "in a great movement for the overthrow of the government of the U.S., sponsored and adhered to by thousands of alien agitators, directed and engineered by the guiding hand of Lenin and Trotski, I believe that it was the duty of the department of Justice, the branch of the government to whom the American people look for the protection of its institutions and government, to move with dispatch." Sterling answered Walsh's charge that the Justice Department had no right to investigate possible violations of the Immigration laws, by finding "nothing to condemn in the cooperation of the Department of Justice with the Department of Labor in apprehending any number of aliens whose beliefs and practices rendered them subject to deportation under the law." Moreover, Sterling came across no evidence that the BI had deprived "any person whomever of any legal or constitutional right." [27]

While Sterling could not get a majority of Judiciary Committee members to support his findings, he successfully frustrated Walsh's and Borah's efforts to move ahead on the proposed legislation. On February 5, 1923, almost two years after it had completed its hearings, Walsh asked the full Senate to discharge the subcommittee from further consideration of the question and to print both this reports in the Record. The Senate approved this request without objection. [28]



It would be incorrect to conclude that opposition from conservatives in the House and Senate Judiciary committees alone explains why the Huddleston and Borah bills failed to attract sufficient support to warrant committee hearings on the subject. It is likely that the 66th Congress (1919-1921) shared the Senate Judiciary Committee's ambivalence toward federal suppression of radicals. While many congressmen continued to believe that EI anti-radical investigations were necessary, many others wanted to somehow restrain the Justice Department's authority. In December 1920, for example, the Senate voted to investigate the NFGL's charges of illegal department activities, even though it had wholeheartedly endorsed the deportation strategy less than a year earlier. This shift from support to skepticism can largely be attributed to the Justice Department's contempt for "due process" and irrefutable documentary evidence that some innocent people had been brutally treated.[29]

Yet while the red raids convinced many Americans that summary justice and official vigilantism had no place in American society, no consensus formed around any one solution to the problem of administrative abuses. Those who favored a legislative remedy such as the Huddleston and Borah proposals remained in the minority. It is likely that among those who became disillusioned with Palmerism, many came to believe that the limited effect of the deportation raids showed that the system worked. Even though the Justice Department had initially violated the rights of radical aliens and others, the Attorney General was unable to complete this purge because his moves were

successfully checked by Assistant Secretary Post. Believing that there was nothing seriously wrong with American institutions or law and that the bureaucracy was self-correcting, they did not think that fundamental reform of the Immigration law or the EI was necessary. Finally, because many identified the deportation raids with a particular Attorney General, thus the appellation, "Palmer Raids", they assumed that the new Attorney General would be less inclined to violate the law in order to protect the nation's security.[30]

In this faith, they were to be disappointed. Neither the Wilson or the Harding administration supported the Huddleston or the Borah proposals. Harding's Attorney General, Harry Daugherty, shared Palmer's aversion to legislation limiting Justice Department power. For both men, such action was completely contrary to the department's stated objective to rout the reds at almost any cost. Since anti-radicalism received the department's highest priority, both men repeatedly opposed any measure which would have tied the EI's hands. Furthermore, neither ever publicly admitted that the problems addressed by the legislation even existed. Their argument remained that no serious rights violations had ever been committed in security's name. In view of the Wilson and Harding administrations' opposition to the measures, it is not surprising that congressional liberals and progressives failed to garner enough support for even these modest reforms.[31]

Congressional failure to conduct a serious investigation of the BI'S anti-radical investigations had serious immediate and long-term consequences. First, Congress never learned of the breadth of BI political surveillance during the early post war years. Congress accepted at face value the Attorney General's reports which claimed that BI investigations were limited to violations of the law and that only fringe groups and dangerous radicals were the legitimate subject of BI investigations. If there were suspicions that mainstream political figures and other prominent Americans were the target of surveillance, Congress took no action to curb these intelligence activities. Second, its refusal to force the BI to relinquish any claim the BI might have to conduct purely political investigations allowed the Bureau to continue its widespread political surveillance. Congressional inaction at this critical juncture demonstrated that the Congress was either unwilling or unable to oversee the activities of the BI and encouraged the notion that the Bureau was above the law, subject only to its own set of rules and regulations.[32]

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In November 1920 Warren G. Harding, Republican candidate for President, overwhelmingly defeated his Democratic opponent, James M. Cox. Harding received over 60% of the total popular vote and 404 electoral votes. Since Republicans and Democrats generally agreed that the federal government should continue to monitor the red menace, issues related to internal security had little effect on the outcome of the general election. Indeed,

candidate Harding had tried to defuse the issue by proclaiming that the threat of radicalism had been consistently overstated by Wilson's Justice Department and that "too much has been said about Bolshevism in America." Given Harding's campaign rhetoric many hoped that when the new administration took office in March 1921 that the new Attorney General would restore public confidence in the Justice Department. Harry Daugherty of Ohio, however, had little interest in de-politicizing the department. For the EI, it was business as usual. As noted above, Daugherty shared Palmer's conviction that radicalism threatened the nation's security. Consequently, Daugherty believed that the Justice Department should use its resources to suppress radical ideas. To achieve this, the Attorney General dismissed EI chief William Flynn in March 1921 and appointed his close friend, William Burns director of the EI. As head of the Burns International Detective Agency, Burns had earned a national reputation as a union-buster and was one of the country's premier red-hunters. Ten years earlier, for example, Burns had been instrumental in the successful prosecution of the McNamara brothers for their role in the dynamiting of the Los Angeles Times. Given Burns's background and flagging public support of the EI's anti-radical programs, a more inappropriate choice would have been hard to find. James Giglio, Daugherty's biographer, calls the Burns appointment his worst. Under Burns's direction, the Bureau equated criticism of the conservative political order with sedition, and the drive against liberals and radicals which Palmer had initiated in 1919 continued. Burns, obviously

impressed with the work of GID chief Hoover, promptly promoted Hoover to assistant chief in charge of general intelligence.[33]

Daugherty, Burns and Hoover were not alone in their intolerance of political dissent. Despite the public's reaction against "Palmerism", anti-radical nativism remained an important and powerful political force in the United States throughout the 1920's. Voluntary organizations such as the American Legion and the National Security League and business groups like the National Civil Federation and the National Association of Manufacturers called on the Harding Administration to champion "100% Americanism" and join the fight against labor unions and radical political organizations. Although Justice Department and FBI officials understood that the appropriations law authorized the Bureau to investigate possible violations of federal law, Daugherty, Burns, and Hoover encouraged Bureau agents to conduct general intelligence investigations of practically every liberal, progressive, and radical organization in the country. As Ann Morrisett Lavidon later wrote: "Even the Quakers scared the FBI." [34]

By 1921, the GID had established a vast network of informers in left-leaning political organizations who provided the Bureau with first-hand information about the activities of hundreds of organizations and thousands of individuals. Through its informers, the Bureau had access to account books, membership lists, and minutes of meetings conducted at both the local and national level. The Bureau's Buffalo field office, for example,

knew that the 125 members of the Socialist Party of Buffalo who were of Italian descent had paid monthly dues totaling \$62.50, half of which was sent on to the national and state organization. The same report notified the GID that the Buffalo chapter of the Communist Party earned \$20.00 in May 1921 selling copies of their newspaper "Workers Challenge". On August 31, 1921, special agent J.P. McDevitt forwarded a copy of the minutes of the "district Executive Committee District 3, Communist Party of America" and a report from "a colored member of the IWW" which described efforts to organize a strike among Philadelphia's stevedores.[35]

Colleges and universities came under similar scrutiny. In early June 1921, special assistant to the Attorney General W.W. Grimes ordered the Boston field office to prepare a report on radical activities in educational institutions in the New England area. On June 8, assistant District Supervisor William West filed his report on the activities of students and faculty members at Harvard, Wellesley, Massachusetts Agricultural College, Simmons College and the University of Vermont. West reported that Harvard employed Harold Laski who had come "to the notice of (the Boston BI office) on account of his radical utterances and activities." Another Harvard faculty member, Jacob Bronfenerer, "had expressed himself favorable to anarchist doctrines." A Professor Newell at Wellesley College had "offered a course in anarchism, in which the theories of Karl Marx, Lenin and Trotsky were taught to a group of twenty or thirty students. . . all of whom subscribe to 'THE NATION', 'THE WORKER' and 'ELTZBACHERS'." Professor Eva Stilla, West reported, had

addressed the Fabian Society of Boston "on the subject of 'Cooperation and the New Order', in which she outlined the establishment of cooperatives by working men and the use of same as commissaries during strikes." [36]

Although the FBI has always denied allegations that it had ever investigated Congressmen for political reasons, newly declassified files show that the Bureau regularly placed prominent senators and representatives under surveillance in the early 1920's. Many of these records were either refiled or destroyed sometime before June 1, 1943 and are not available in the National Archives collection. Nevertheless, it is possible to piece together part of the story from the indices to the files which are available and from other sources. In the four months between April and July 1921, BI agents filed no less than eight separate reports on the activities of Senator Joseph France, an early critic of the deportation raids and an advocate of U.S. recognition of the Soviet Union. In early May the GID procured a copy of a telegram France had sent from London following his recent tour of the Soviet Union. On May 21, 1921, special agent H.J. Lencz attended a meeting of unemployed workers which was addressed by France and forwarded a copy of his speech to the gathering. On July 30, the Chicago field office reported that France planned to address the Chicago Federation of Labor on Labor Day. In March and April 1921 BI agents "shadowed" Senator Robert LaFollette and filed reports outlining his "general activities". Field offices sent the GID copies of speeches LaFollette delivered to an Unemployment Conference, a Labor Day

Bally, and one which favored U.S. recognition of the Irish independence. In 1924 Gaston Means, a former BI special agent, told a Senate committee that the BI had conducted an investigation of LaFollette after the Senator had introduced a resolution calling for an examination of the affair. Means claimed that he had broken into LaFollette's Senate office to "find out all the mail that comes in, all the papers, anything that he has lying around." [37]

Other evidence suggests that such break-ins were not uncommon. In 1920 special agent (and later assistant director) W.W. Grimes obtained a telegram from Congressman Phillip Campbell's office. In September 1922 BI chief Burns ordered his agents to investigate Congressman Oscar E. Kellar. On September 10, Kellar, an independent Republican from Minnesota, had introduced a resolution calling for the impeachment of Attorney General Daugherty. Earlier, Daugherty had issued an extremely broad labor injunction aimed at breaking the railroad workers' strike and destroying their union. During the course of their investigation of Kellar, BI agents broke-in to the congressman's Washington office and ransacked his desk hoping to find some derogatory or incriminating evidence. Sometime in 1921 (the index card is not specific) a BI agent broke-in to and ransacked the office of Senator William Borah. The break-in was probably part of a general investigation of Borah's campaign for recognition of the Soviet Union, but could have been related to the bill Borah had introduced in April 1921. Files obtained through the FCIA suggest that the Bureau was more interested in



Borah's views about foreign policy and veterans' affairs than his criticism of the Justice Department. On February 28, 1923, for instance, BI director Burns ordered the New York field office to prepare a report on a speech Borah was scheduled to deliver to the World War Veterans, a leftist veterans group organized by the Workers Party. On March 12, New York SAC Edward Brennan forwarded the memorandum together with a copy of Borah's address advocating, among other things, full amnesty for political prisoners. Several days later field agents assigned to the New York office attended a meeting of the Kings County Republican Committee in Brooklyn to hear Borah advocate U.S. recognition of the Soviet Union. The agents forwarded a verbatim copy of the 24-page speech to Washington the following morning.[38]

It is entirely possible that the BI could have collected this type of information ad infinitum (provided an agent did not get caught in the middle of the night in a congressman's Capitol Hill office) without arousing much suspicion or public criticism, but the Bureau's proclivity to pursue what Frank Donner calls "aggressive intelligence" activities renewed efforts to limit BI investigations to violations of the federal law. The difficulty from the BI's perspective was the absence of a peacetime sedition law. The provisions of the 1918 Sedition act prohibiting defamation of the Constitution and the government had expired when the war ended. The Sterling bill, like several other similar proposals, had not been approved. Hence, the Justice Department was hard-pressed to find alternative methods to discredit radicals and suppress dissent. Consequently, the

Bureau continued to investigate violations of the Immigration law, even though it had found deportation cumbersome and wholly inadequate to deal with the "menace", as it was officially perceived. Following the widespread public criticism of the deportation raids, the Bureau had to scale down these investigations, resulting in fewer deportations than the Bureau would have otherwise recommended. Hence only 81 radicals were deported in 1924, down from a high of 446 in 1921.[39]

The case of Nicholas Manseovich, while perhaps not entirely representative, illustrates the delays and frustrations. By the end of the First World War, a substantial number of Eastern European immigrants had settled in or around Detroit, Michigan. The Union of Russian Workers (URW) established a chapter in the Detroit area as it had in many other Slavic communities in the United States. Members of the URW, most of whom were philosophic anarchists in the tradition of Tolstoi, quickly established themselves as the most outspoken and energetic advocates of the rights of the foreign-born worker. In January 1920, when the Justice Department swept through Detroit with a vengeance, the URW bore the brunt of the assault. Of the 800 men and women arrested in Detroit during the January deportation raids, probably half were members of the URW. The overcrowding and incredibly dismal conditions at the makeshift prison, dubbed the "Black Hole of Calcutta" by local journalists, prompted a group of prominent women to investigate the raids. Like the NPGL and the IWW, the women found that most of those who were arrested were hard working men and women who had committed no overt action

inimical to the best interests of the Detroit community or the nation as a whole.[40]

While community leaders in Detroit and other large industrial cities tried to foster greater understanding of the foreign-born worker, these efforts had little effect on the rabid anti-radicalism of the BI. Bureau officials on both the local and national level continued to believe that radical aliens constituted a clear threat to the nation's security. SAC Arthur Barkley, who had led the January 1920 deportation raids in the Motor City, assisted by special agent Thomas Wilcox kept a close eye on the activities of the local chapter of the URW. Constant surveillance of the distribution of the URW'S newspaper Wolna was central to these investigations. On February 12, 1921, the BI's Detroit field office reported that past issues of Wolna had been shipped to that city from Philadelphia and New York City, but more recently, a local printing shop had produced several issues of the paper. Several months later, on July 22, SAC Wilcox informed the GID that "we are not in the possession of any new information concerning this magazine. . . (but) confidential informant is endeavoring to secure definite information." In August, special agent Fred Hessler advised the GID that "due to the lack of funds, the publication of this paper has been temporarily suspended (in Detroit). . . (and that) (t)hrough confidential sources, it has just been ascertained that a shipment containing 800 copies of 'Wolna' issue 18, has been recently forwarded from N.Y." For the next month, field agents and various Bureau operatives watched the bundles of the paper

which lay unclaimed at the American Railway Express Station. On September 3, after receiving word from their confidential informant that the newspapers were about to be delivered, special agent Barkley reported that two agents had followed the delivery truck to the home of Nicholai Mansevich, 11569 Nagel St., Hamtramck, Michigan. There the agents interrogated Mansevich. Convinced that he was instrumental in the distribution of Wolna, they turned him over to Immigration Bureau officials for the initial deportation hearing.[41]

Mansevich, who had emigrated from Gredno, Russia ten years earlier, worked at the Ford Motor company and was an active union member. He was married and had three daughters, 3, 5, and 6 years old. Denied legal counsel at the hearing before Immigration inspector Robert W. Panfewere, Mansevich answered several theoretical questions without fully comprehending the ramifications of his replies. For example, when asked whether he believed that the government of the United States should be overthrown, he responded: "The American Government deserves the same treatment as the Czar's." BI agents Wilcox and Apelman appeared as government witnesses and testified that Mansevich had received, and intended to distribute, copies of Wolna. Despite the absence of any evidence that Mansevich planned to translate his answers to the theoretical questions into criminal action, Inspector Panfewere recommended Mansevich's deportation.[42]

A citizens group protested the Immigration inspector's decision to deport Manseovich. The group included Frank Murphy, the former assistant U.S. Attorney who later became governor of Michigan, U.S. Attorney General, and Supreme Court Justice, Charles D. Williams, the Episcopal bishop of Detroit, Frank Butzel, a banker who was a member of the Detroit Corrections Commission. They petitioned the Labor Department to free Manseovich. Community leaders also signed a petition protesting the action. "As a wage earner, a father and a husband," the document read, "Nicholai Manseovich has a clear record. We believe that he is the victim of a grave injustice and that his deportation would not be in harmony with all that is best in American traditions and ideals. . . . He is an honest, industrious, self-respecting working man, and is known personally by many Detroit citizens who believe that he can with entire safety be permitted to continue to live in the United States." Despite the committee's eloquent plea on "behalf of all fair-minded citizens", assistant commissioner of Immigration Dixon reported on April 22, 1922 that after careful review of "additional evidence presented in the case the Department has found it necessary to affirm the previous order of deportation." [43]

Although the Immigration Bureau agreed to deport Manseovich, the outcome in these cases was not always predictable. As noted in the previous chapter, the difficulties and delays encountered in the process, coupled with the adverse publicity, led the Bureau to seek other methods to deal with radical dissent. In

early 1921 Attorney General Daugherty announced that the Bureau would assist state and local "red squads", i.e., police intelligence units established in the early 1920's, to investigate violations of state sedition laws passed during the heady days of the great Red Scare. While the Bureau could not officially participate in the prosecution of individuals in cases arising from these investigations, the Attorney General argued that nothing in precluded it from "advising" the states' attorneys and supplying evidence needed by the prosecution to try these cases effectively. State and local officials who shared the Bureau's anti-radicalism welcomed federal assistance, in part because their offices lacked the manpower and the expertise needed to prove conspiracy and intent to violate the sedition laws. When it found an enthusiastic prosecutor, the Bureau put its enormous resources at his disposal, allowing the local district attorney access to its extensive files on "subversive activities". The results testify to the program's effectiveness: in 1922, state courts convicted 115 persons for violating sedition, red flag and anti-syndicalist laws.[44]

In August 1922 the BI supervised a spectacular raid on a secret meeting of the executive board of the Communist Party in rural Bridgman, Michigan, a resort town tucked away on the southeast shore of Lake Michigan not far from Chicago. The Bureau had learned of the meeting through one of its "special employees", an undercover agent who had managed to infiltrate the party's leadership earlier in the year. The informer, a Camden, New Jersey shoplifter named Francis X. Morrow, had been offered

a dollar a day to join the party in February 1920. Two years later, after the party had gone underground to avoid police surveillance and harassment, Morrow was getting \$5.00 a day plus expenses, still a good investment considering Morrow's position in the party. When Morrow received instructions from the party leaders in early August 1922 to attend the Bridgman meeting, he immediately informed BI director Burns of the party's plans. Burns then instructed the Chicago SAC to "Proceed at once to locate [the party's secret convention] and keep [it] under discreet surveillance." [45]

On August 22, following several days of observation, special agents Jacob Spolansky, a veteran of the GID, and agent Edward Shanahan, alerted local officials that the Communists were meeting nearby in violation of Michigan law. Spolansky, assisted by Bridgman sheriff George Bridgeran, twenty deputies and several other BI agents, staged a surprise raid on the convention and captured two leading party members, Charles Euthenberg and William Z. Foster, as well as undercover agent Morrow, and 13 others. In the confusion, important party documents were hidden in two barrels, which were later found on a tip from Morrow. Relying on this evidence and testimony volunteered by Morrow, the Michigan attorney general brought charges against the Communist party members under the state's 1919 anti-syndicalist law. "While the alleged offense was a state one," Michael Felknap writes, "this was a federal case in everything but name." [46]

The ACLU, which had been monitoring federal anti-radical activities since the deportation raids, challenged the Bridgman raid on constitutional grounds. The ACLU claimed that federal authorities did not have the right to arrest persons who allegedly violated state laws and could not oversee prosecution of these cases. The department's initial reaction to the ACLU's charges was to ignore them. The Attorney General failed to respond to a letter asking "under what authority and under whose authority" the arrests had been undertaken. When pressed by ACLU board member Norman Thomas to respond, assistant attorney general Mable Walker Willebrandt replied to the ACLU requests. "You have been given all the information with regard to the Bridgman affair which can properly be released at the present time for unofficial use. . . . (and that the department is) not called upon to account for its actions or to release information which it deems confidential." [47]

On November 25, 1922 BI chief Burns, in an attempt to defuse the Bridgman controversy, told ACLU attorney Albert DeSilver that "no agents of the BI. . . have been or are not now engaged upon any matters in connection with the arrests at Bridgman, Michigan, in which this Department has not proper interest." Burns added that the BI had not performed "any duty which in any way is beyond the scope of authority provided by Congress." Despite Burns' denials, the ACLU continued to press its case, collecting evidence and affidavits to refute the Bureau's assertions. Under the ACLU's direction, labor unions and liberal political organizations attempted to persuade Michigan officials



to limit Justice Department interference in the case. Then, Frank Walsh, who was representing several of the defendants, uncovered evidence which suggested that Allan C. Meyers of the Burns Detective Agency had access to official government documents and had briefly played a role in EI anti-radical investigations. The new revelations briefly put the Bureau on the defensive. When asked to respond to the allegations, director Burns declined, claiming that "to answer that questions. . . might defeat the ends of justice." [48]

Initially the ACLU'S criticism of the Bureau's role in the Bridgman raid did not disrupt the Justice Department's anti-radical strategy. On April 9, 1923, for example, the EI coordinated a police raid at the Typographical Temple, 428 G Street NW, Washington, D.C., netting 16 persons. The Labor Defense Council had organized the meeting to raise money for the defense of William Z. Foster and several other Bridgman defendants. The police confiscated Workers' Party pamphlets and other literature that was to be distributed at the meeting and took Edward J. Irvine, secretary of district local of the Workers' Party, and James E. Cannon, national chairman of the Workers' party, to the station house for further questioning. Later that evening, a second squad of police led by the veteran red-hunter Steve O'Dea, raided a bookstore and soda fountain operated by Abraham Ravich, seizing numerous books, pamphlets, and other literature. The following day, Washington, D.C. detectives searched Irvine's home and found a letter that allegedly outlined Workers' Party plans to convert "thousands of

government workers in Washington to revolutionary ideals." Following a meeting between BI officials and members of the Washington red squad, FI inspector C.L. Grant and Major Daniel Sullivan declared that "Washington will be cleaned of all enemies of America who would bring about a revolution and attempt to set up a soviet government." The government's case against Irvine and the others, however, was particularly weak since no overt act had been committed. On April 11, after hearing preliminary arguments in the case, Justice A.A. Hoehling of the Supreme Court of the District of Columbia dismissed federal conspiracy charges against the defendants.[49]

Justice Hoehling's decision in the Irvine case did not deter the Bureau. Two and a half weeks later, FI agents directed a series of raids on the homes and offices of Workers' Party members in the Pittsburgh area. That evening, squads of city and county police, using warrants sworn out by Allegheny County District Attorney Samuel Gardner, arrested 24 persons and seized "many tons of literature, printed in at least seven different languages." The material was "alleged to have as its purpose the inciting of May Day riots and the general overthrow of government and industry in the United States." The next day, the Pittsburgh Post called the raids the largest and most important "in the history of Western Pennsylvania." In the course of their activities, police also confiscated typewriters, writing materials, stationary, party records, mailing/membership lists, subscription blanks for the Bridgman defense fund, and a red flag that "measured 12 feet in length and four feet wide." On April 28

District Attorney Gardner explained that the investigations leading to the raids confirmed that the Workers' Party was trying to organize foreign-born and black workers in Allegheny County factories and mills. "The time for a clean-up," Gardner told reporters, "was opportune." Sixteen party members in all were charged with violating the state's sedition law and eight others were held pending further investigation. Bail was set from \$1,000 to \$50,000, high enough to keep the suspects in jail until May Day had passed.[50]

On April 28 BI division superintendent E.E. Spencer announced that the Bureau "stand(s) ready to render any assistance possible. . .to the district attorney's office in the prosecution of the cases." More arrests followed Spencer's proclamation. On May 3, Pittsburgh police, aided by special agent H.J. Lenon, arrested two reporters who had been assigned to cover the story by radical New York newspapers. A field representative of the Workers' Party Lithuanian Division was also held for questioning. Later that same day, however, county officials released the three, along with nine others who had been taken prisoner during the April 17 raids. A spokesman for District Attorney Gardner also admitted that "the others will go free. . .due to insufficient evidence in the hands of the Government." [51]

On May 25, 1923, BI chief Burns, in an address to the Shore Rotary Club in Atlantic City, New Jersey, tried to breathe new life into popular anti-radicalism. Burns called on Congress to

approve a proposed peacetime sedition bill then pending which would enable the Bureau to "drive every radical out of the country and bring parlor Bolsheviks to their senses." Anticipating McCarthyite attacks on the intellectual community by almost a quarter of a century, Burns blamed America's failure to cope properly with the red menace on "a system in schools and colleges that was turning out 'parlor Bolsheviks'." Several months later, while testifying before the House Appropriations Committee, Burns sounded the tocsin once again: "Radicalism is becoming stronger every day in this country. They are going about it in a very subtle manner. For instance, they have schools all over the country where they are teaching children from 4 to 5 years old. . . I dare say that unless the country becomes thoroughly aroused concerning the danger of this radical element in this country we will have a very serious situation." Attempts to fight the red menace, Burns alleged, had been severely crippled by the ACLU and other "parlor Bolsheviks". "Whenever we seek to suppress these radicals, a civil liberties union promptly gets busy. For instance, when our men aided the authorities at Bridgman, Michigan, the Civil Liberties Union of New York promptly demanded to know what authority we had for sending our agents there. They insisted on knowing specifically under what law we did it." Despite these and other efforts to draw attention to the "radical threat", Burns' campaign failed to attract much interest. The department, it appeared, had cried "wolf" once too often, and although the hard core, anti-radical right still got excited every time the Attorney General or the

director of the BI issued a new warning, few others did.[52]

The death of Warren Harding in August 1923 provided a new opportunity to address the issue of intelligence reform. The Bureau's critics stepped up their efforts to persuade the new President, Calvin Coolidge, to reorganize the Justice Department and de-politicize the BI. In January 1924, the ACLU'S executive board commissioned an examination of Bureau political surveillance, its use of wiretapping and its co-operation with private detective organizations. The final report, "The Nationwide Spy System Centering in the Department of Justice" was published in May and copies were sent to federal judges, congressmen and other prominent government officials. While this was the most ambitious campaign to end government surveillance of lawful political activities since 1921, it could have foundered like earlier efforts had it not been for the Teapot Dome scandal. In late 1923 and early 1924, it was alleged that Attorney General Daugherty and Secretary of the Interior Albert Fall, were involved in an attempt to sell federal oil reserves to privately-owned corporations. On March 28, 1924, President Coolidge, who had taken office in August 1923, fired Attorney General Daugherty for refusing to cooperate with a Senate investigation of the Justice Department. Coolidge appointed Harlan Fiske Stone, a prominent New York attorney and former dean of the Columbia Law School, attorney general.[53]

Harlan Fiske Stone was a lifelong Republican who had consistently defended free speech and association during the war and the post-war Red Scare. He was eminently qualified to clean-up the scandal-ridden Justice Department. While several insurgent Republicans criticized Stone's ties to Wall Street, the nomination was, on the whole, favorably received. The Washington Star, for example, commented that Stone was "honest, able, loyal - a level-headed, brainy progressive-conservative." And, as his criticism of the deportation raids had demonstrated, Stone did not share Daugherty's or Burns' vision of the red menace. Stone believed that the free exchange of ideas was itself an important value "worthy of protection at the hands of the state." Sharing Zechariah Chafee's belief in the strength and viability of American institutions, Stone wrote in 1919 that "[f]irm but impartial adherence to the law by those in authority, and ceaseless and untiring efforts to educate and enlighten the class to whom [the radicals] make their appeal, together with the fullest and most searching analysis of the doctrines which they preach, are the only methods which hold out promise for the triumph of democratic institutions over the assaults directed against them." In April 1920, Stone reaffirmed his commitment to civil liberties: "Our constitutional system presupposes the right to effect changes in government by the processes of constitutional amendment and legislation, through the medium of the ballot, and the intelligent exercise of the ballot presupposes freedom of opinion and free discussion of all political questions." [54]

Stone's appointment gave the Bureau's critics new hope. Realizing that the new Attorney General would be more receptive to their ideas, ACLU officials urged Stone to dismiss BI director Burns and to order the Bureau to curtail political surveillance: "Under his direction, civil rights are being seriously interfered with throughout the country and prosecutions undertaken solely for opinion." Stone apparently agreed with the ACLU's assessment of the BI director. On May 9, Attorney General Stone met with Burns and announced that the director could either resign or be fired. The following day, Burns handed in his resignation.[55]

On May 12, Stone, in testimony before the Senate committee investigating former Attorney General Daugherty, told Congress that he would reorganize the BI and, until a suitable replacement for Burns could be found, he would "personally supervise its operations." The following day, Stone restricted BI investigations to violations of federal statutes. Stone's May 15th public statement confirming this decision marks a watershed in the history of civil liberties. For the first time, a high-ranking government official recognized that illegal BI surveillance constituted a serious threat to the democratic process:

There is always the possibility that a secret police may become a menace to free government and free institutions, because it carries with it the possibility of abuses of power which are not always quickly apprehended or understood. . . . It is important that its activities be strictly limited to the performance of those functions for which it was created and that its agents themselves be not above the law or beyond its reach. . . . The Bureau of Investigation is not concerned with political or other opinions of individuals. It is only concerned with their

conduct and then only with such conduct as is  
 forbidden by the laws of the United States.  
 When a police system passes beyond these limits,  
 it is dangerous to the proper administration of  
 justice and to human liberty, which it should  
 be our first concern to cherish.[56]

The day after Burns resigned, Attorney General Stone named  
 assistant PI director J. Edgar Hoover acting Bureau director.  
 Hoover's appointment did not bode well for the future success of  
 Stone's reforms. Hoover had, after all, been responsible for the  
 planning and execution of the deportation raids, the Bureau's  
 investigations of its critics, and the anti-radical operations  
 during the Harding years. Yet, when reaching his decision, Stone  
 did not take into full account Hoover's previous positions in the  
 Bureau or his unstinting loyalty to former director Burns.  
 Instead, following assistant attorney general Mable Willebrandt's  
 advice, Stone concluded that Hoover was an honest and efficient  
 administrator who "'had not been contaminated' by his service  
 under Burns." [57]

At first the Bureau's critics, especially the ACLU, were  
 skeptical of the Hoover appointment. When asked by the ACLU to  
 reconsider his decision, Stone arranged a private meeting between  
 Hoover and the ACLU's director, Roger Baldwin to discuss the  
 Bureau's future. When the two men met in August 1924, Hoover  
 reassured Baldwin that the Bureau would no longer investigate or  
 disrupt radical political or labor union activities, adding that  
 the Bureau had severed its ties with the notorious red squads and  
 private detective agencies. Impressed by Hoover's sincerity,  
 Baldwin told Stone: "I think we were wrong in our estimate of



the man. . .What he told me of the details and changes in the administration of the Bureau all indicate that the reorganization meets every suggestion which any of us could possibly make, and that it has already been carried out faithfully in accordance with your stated policy." In December 1924, after John Lord O'Brian, his first choice to head the Bureau, had declined the offer, Stone made Hoover's appointment permanent.[58]

On the surface, Hoover expressed appreciation of the ACLU's endorsement. The BI director later wrote Baldwin that "(i)f I can leave my desk each day with the knowledge that I have in no way violated any of the rights of the citizens of this country. . .then I shall feel satisfied." But since Hoover was never bothered by his own duplicity, the BI continued to investigate the ACLU. While ingratiating himself to the Attorney General and giving lip service to his reforms, Hoover could only have been heartened and emboldened by the patterned failure of Congress, the courts, and the executive to have developed a more effective solution to illegal Bureau activities. Since the Red Raids, Congress had been unable or unwilling to act positively to insure that the rights of Americans would not be violated by officials sworn to uphold the law. In the absence of specific legislation and legal precedent, courts had not found federal officials strictly liable for their own, or their subordinates, activities. And, ironically enough, Attorney General Stone chose the person most responsible for many of the Bureau's worst abuses to implement BI reform and curtail illegal surveillance. Hoover did not hesitate to take advantage of the situation, and for the next

twelve years, the Bureau amassed information on a wide range of dissident political activities in violation of Stcre's mandate.

## NOTES

1) Donner, The Age of Surveillance, 40-44; IARA, 21-23; SDSB, 387-388; Cook, The FBI Nobody Knows, 117-145; Lowenthal, FBI, 269-334; Johnson, Challenge to American Freedoms, 165-175; Michael Belknap, "The Mechanics of Repression: J. Edgar Hoover, the Bureau of Investigation and the Radicals, 1917-1925", Crime and Social Justice (Spring/Summer 1977), 49-58. NEGL, To the American People; "Charges of Illegal Practices of the Justice Department", Senate Committee on the Judiciary, Hearings, 66th Cong., 1 Sess. (1921), 423-24; William Anthony Gengarelly, "Resistance Spokesmen: Opponents of the Red Scare, 1919-1921" (unpublished Ph.D. dissertation, Boston University, 1972). Lawrence Elocks to Roger Baldwin, 3/12/20, vol. 131, ACLU Archives, Princeton University Library, Princeton, N.J. "Checks for Administrative Abuses", Zechariah Chafee, Jr. MSS, Harvard Law School Library, Cambridge, Mass. NPGL to Senator Thomas Walsh, "In Answer to Attorney General Palmer, re: The Charges contained in the 'Report Upon the Illegal Practices of the U.S. Department of Justice'", 15-16, vol. 168, ACLU Archives.

2) Andrew Sinclair, The Available Man: The Life Behind the Masks of Warren G. Harding (Chicago, 1969), 254; John D. Hicks, Republican Ascendancy: 1921-1933 (New York, 1960), 68,

131-132; Lowenthal FBI, 282-289.

3) "Charges of Illegal Practices of the Justice Department," 582.

4) Holder v. Flynn et al., S.Ct.D.C., dec.no. 62627 (1920); "Charges of Illegal Practices", 250-52; BI file BS 203403-5; BS 203403-6; OG 366599.

5) Holder v. Flynn et al.

6) "Charges of Illegal Practices", 250-51; New York Call, "Victim of 'Red Raids' Wins Suit", January 8, 1920, 1. An unpublished manuscript in the Chafee MSS demonstrates that the United States resisted implementation of an effective system of ministerial responsibility similar to those in Europe. Consequently, the dealing with administrative misconduct was ambiguous and somewhat amorphous. "Now, our existing federal law but scantily covers the field of official malfeasance." The law did not, for example, include sanctions against false arrest, illegal surveillance, and warrantless search and seizure. Although many states had considerably better and more comprehensive laws dealing with official malfeasance, "the federal courts have been very zealous in protecting federal officials against state prosecution, invoking the theory that the power to punish federal officials involves the power destroy the federal government." "Checks For Administrative Abuses", Chafee MSS.

7) Salsedo v. Palmer et al., Department of Justice, file 213479, National Archives, Washington, D.C. New York Times, 2/26/21, 7; 2/27/21, II, 1.

8) BI file BS 213479-1; BS 213479-3; ES 213479-7; ES 213479-8; "Charges of Illegal Practices", 144-49; Cook, The FBI Nobody Knows, 109-110.

9) Cook, The FBI Nobody Knows, 114; Lowenthal, FFI, 73-74.

10) Salsedo v. Palmer et al., Department of Justice file 29479, Judge Mayer dissenting, 1-2.

11) Cook, The FFI Nobody Knows, 111; Francis Russell, Tragedy in Lecham (New York, 1962).

12) Cook, The FFI Nobody Knows, 111, 113-115.

13) New York Times, 2/26/21, 7; 2/27/21, II, 1; BI file BS 213479-11; ES 213479-16.

14) Salsedo v. Palmer, Department of Justice file 213479; BI file BS 213479-12.

15) Meyer dissent, Salsedo v. Palmer, Department of Justice file 213479.

16) "Charges of Illegal Practices", 376-79; Marcinak v. Palmer, S.Ct. D.C., civil dcc.rc. 65145; New York Times, 2/3/21, 14.

17) "Charges of Illegal Practices", 439; EI file ES 162600-1032; CG 379331.

18) "Charges of Illegal Practices", 376-80, 439; EI file ES 2026000-1032.

19) There are several discrepancies in the public records as to the date of Marcinak's death. January 19, 1920, however, seems the most likely date, since it is the date given in the plaintiff's complaint. "Charges of Illegal Practices", 378, 433.

20) "Charges of Illegal Practices", 377; Marcinak v. Palmer, S.Ct. D.C. civil doc. no. 65145.

21) Marcinak v. Palmer, S.Ct. D.C. civil doc. no. 65145.

22) "Checks for Administrative Abuses", Chafee MSS; "Charges of Illegal Practices", 229-230, 787-88; John Lord C'Brian, "The Menace of Administrative Law", reprinted in "Charges of Illegal Practices", 787-788.

23) "Charges of Illegal Practices", 278-80; NFGL, "In Answer to Attorney General Palmer", 16, vol. 168, ACLU Archives, Princeton, N.J.

24) H.F. 12816, 59 Congressional Record (February 28, 1920), 3650; 59 Congressional Record (April 23, 1920), 6086. on September 5, 1922, Huddleston introduced this bill in a somewhat different form, but this bill suffered the same fate as H.R. 12816. 62 Congressional Record (September 5, 1922), 12152.

25) S.664, 61 Congressional Record (April 13, 1921), 187.

26) Judson King to Frank E. Walsh, 1/29/21; Walsh to King, 2/2/21, box 37, Frank E. Walsh MSS, New York Public Library, N.Y., N.Y. Swinburne Hale to Judson King, 4/8/21, Judson King MSS, Library of Congress, Washington, D.C.; Zechariah Chafee to Roscoe Pound, Chafee MSS, Harvard Law School Library.

27) "Charges of Illegal Practices", 573. 64 Congressional Record (February 5, 1923), 3005-3027.

28) 64 Congressional Record (February 5, 1923), 3005.

29) Senate Document 153, "Investigative Activities of the Justice Department, 1919," 66th Cong. 1st Sess. (1919); Gengarelly, "Resistance Spokesmen", 236.

30) Gengarelly, "Resistance Spokesmen", 241-245.

31) After carefully examining the available primary and secondary sources, I found no indication that either the Wilson or the Harding administrations ever seriously considered the bills, preferring instead to ignore them completely.

32) Danner, Age of Surveillance, 42-44; Cook, The FBI Nobody Knows, 117-145; Johnson, Challenge to American Freedoms, 149-175; Lowenthal, FBI, 269-281; Belknap, "Mechanics of Repression", 51-52. See generally BI file index, 1908-1922, under title of radical newspapers published during the period for a full listing of indices; see particularly, Skully to

Hcover, 8/15/21, BI file ES 202600-33-302.

33) James Giglio, H.M. Laugherty and the Politics of Expediency (Kent, 1978), 128-130; Sinclair, The Available Man, 262; Lowenthal, FBI, 269-281; Murray, Red Scare, 260-262; Denner, Age of Surveillance, 42-44; Johnson, Challenge to American Freedoms, 165-167; Murphy, Meaning of Free Speech, 185-187.

34) Preston, Aliens and Dissenters, 243. Arn Morrisett Davidon, "Even the Quakers Scared the FBI," The Nation (March 11, 1978), 266-269. See also, general index to BI files, 1908-1922, National Archives, Washington, D.C.

35) McDevitt report, 8/31/21, BI file ES 202600-167-40; Blackman report, 5/31/21, BI file 202600-33-276.

36) West report, 6/6/21, EI file ES 202600-1622.

37) Sigmund Diamond, "God and the FBI at Yale," The Nation (April 12, 1980), 423-428. See general index, EI files, 1908-1922, under Joseph France, Robert LaFollette and William E. Schah. I recently filed an FOIA request for these documents since they are not in the collection housed in the National Archives, but the FBI failed to locate any reference to these documents in their central index. Presumably the records have been destroyed. Senate Select Committee on the Investigation of the Attorney General, Hearings, 68th Cong. 1st Sess. (1924), 88-95.



38) Giglio, H.M. Daugherty, 152-153; Grimes report, 6/5/20, EI file OG 120964; Brennan to Hoover, 2/28/23, EI file 62-387-73; New York field office to Hoover, 3/10/23, BI file 61-3546.

39) Donner, Age of Surveillance, 177-180; Jare Clark Perry, Deportation of Aliens From the U.S. to Europe (New York, 1931), 225. Chafee, Free Speech in the U.S., 103. Annual Report of the Attorney General, 1921 (Washington, 1922), 129-130.

40) EI file index, Union of Russian Workers, 1919-1922; see BI file OG 369489, BS 202600-198, for a history of EI surveillance of URW. Skully to Hoover, 8/15/21, BI file BS 202600-33-302. Frederick Barkley, "Jailing Radicals in Detroit", The Nation 110 (January 31, 1920), 136-137; 110 (April 10, 1920), 458-459; C.M. Panunzio, The Deportation Cases of 1920 (New York, 1920). Thomas Walsh MSS, box 278, folder 3, Library of Congress, Washington, D.C. Murray, Red Scare, 215-216. Roger Keeran, The Communist Party and the Auto Workers Unions (Bloomington, 1980), 28-59;

41) BI file BS 202600-345-163. Barkley to Hoover, 2/21/21; 10/1/21; Hessler to Hoover, 8/5/21; 8/20/21; 9/6/21; 9/20/21; 9/24/21; EI file BS 202600-345-163.

42) Barkley to Hoover, 9/20/21, BI file BS 202600-345-163; Agnes Inglis to Thomas Walsh, 3/14/22, Walsh MSS, Box 278, folder 3.

43) "The Nicholas Manseovich Case: An Appeal too All Fair-Minded Citizens", Walsh MSS, box 279, folder 3. Dixon to Inglis, 4/20/22, Walsh MSS, box 279, folder 3.

44) Lowenthal, FBI, 270-271; Danner, Age of Surveillance, 42-44; Belknap, "Mechanics of Repression", 52.

45) Paul Murphy, Fearing of Free Speech: First Amendment Freedoms From Wilson to FDR (Greenwich, 1972), 186-87. Belknap, "Mechanics of Repression", 53-54.

46) Belknap, "Mechanics of Repression", 53.

47) Thomas to Laugherty, 9/2/22; Ward to Willebrandt, 10/5/22; Willebrandt to Thomas, 9/22/22, Department of Justice file 202600-2721; Belknap, "Mechanics of Repression", 53.

48) Belknap, "Mechanics of Repression", 54.

49) Washington Post, 4/10/23; 4/11/23; 4/12/23; New York Times, 4/10/23; The Nation 116 (May 9, 1923), 546.

50) ACLU, Record of the Fight for Free Speech in 1923 (New York, 1923), 8-11; Pittsburgh Post, 4/28/23, 4/49/23; New York Times, 4/28/23, 2/29/23; Washington Post, 4/28/23.

51) Pittsburgh Post, 5/4/23.

52) House Committee on Appropriations, Hearings on 1925 Appropriations Bill, 68th Cong. 1 Sess. (1924), 91-95. New York Times, 5/25/23, 44. In what may have been the most bizarre attempt of all to discredit American communists, BI director

Burns sent a copy of the forged "Zinoviev instructions" to Secretary of State Charles E. Hughes. The letter purportedly urged the Workers Party to storm the White House and raise the red flag over the executive mansion. Former BI agent Robert J. Branigan told the New York World at the time that the Workers Party had no plans or intention to resort to armed conflict, in part, because "(a) quarter of the force of the New York police could handle any armed revolution they could put up." Despite this and other evidence that the document had been forged, Secretary Hughes released the letter to the press to prove the perfidity of the Soviets and their agents in the Workers Party. The State Department's action secured the anticipated results. As Paul Blackstock writes: "A flood of mail arrived at the State Department in response to the publication of the Zinoviev 'Instructions' from patriotic organizations, private business concerns, and Russian emigre organizations, indicating widespread support for (the administration's policy of non-recognition of the Soviet Union)." In addition, the publication of the letter bolstered Burns's contention that there existed a well-organized plot to overthrow the government of the United States by force and violence. Paul Blackstock, Agents of Deceit: Frauds, Forgeries and Political Intrigue Among Nations (Chicago, 1966), 81-102.

53) ACLU, Nationwide Spy System Centering in the Justice Department (New York, 1924); Ertle Noogle, Tearot Dore: Cil and Politics in the 1920's (Baton Rouge, 1962); Like other critics of the Bureau, the ACLU had been under investigation by the BI

since its founding in 1920. On March 1, 1920, George Ruch recommended to GID chief Hoover that the Bureau assign one of their undercover agents to the ACLU since it was "preparing to start a campaign throughout the United States for free speech, free press and against the national (deportation) raids which have been conducted by the Justice Department." The ACLU, Ruch noted incredulously, was ready to defend anyone, "no matter whether they be anarchists, IWW, Communists, or Union of Russian Workers (sic)." Following Ruch's recommendations, Bureau informers and undercover operatives infiltrated the ACLU and provided the FI with the organization's literature, the minutes of meetings, membership lists, financial records, and other confidential material. In January 1923, FI director Burns notified the Solicitor General of the United States that the Bureau's files on the ACLU "were voluminous." Burns continued: "(The ACLU) is an organization composed of a lot of extreme liberals which, at every opportunity, seeks to embarrass the authorities of the proper enforcement of the law. They justify their stand on the ground that it is an effort to abridge freedom of speech and of the press but, as you know, this is a stock argument used by parlor Bolsheviks at every provocation." In January 1924, after the ACLU had renewed its efforts to end illegal surveillance, FI director Burns ordered H.J. Lench to prepare a report updating the group's recent activities. Lench confirmed that the ACLU had 1) campaigned for amnesty for political prisoners still in jail for violating the espionage and sedition laws, 2) tested a martial law declaration in Mingo County, West Virginia, 3)

intervened in deportations hearings on behalf of radical aliens, most notably Nicholas Manseovich. The ACLU's leaders, Lennon suggested, were "Pinks and Reds" and "all shades in between," and were involved in "radical and extreme pacifist campaigns." While there were a number of "so-called civil liberties groups" operating in the United States, Lennon concluded that "gradually the American Civil Liberties Union has taken over all their work. . . (and now plays) big brother to them all, from the bomb-throwing anarchist to the wrist-slapping pacifist, and the preferred occupation, slacker." "They Never Stopped Watching Us: A Conversation between Roger Baldwin and Alan Westin," Civil Liberties Review (November/December 1977), 18-22.

54) Harlan Fiske Stone, "The Conscientious Objector", Columbia University Quarterly (October 1919), 21; see also, Chafee, Free Speech, 232-240. "A savings account, a steady job, and plenty of good-humored toleration and friendly help and encouragement", Chafee writes, "will bring into harmony with our ideals all but a few heated theocrats, who are not likely to be such a menace to our national safety that we cannot counteract them by sound reasoning." Chafee, 239. 110 The Nation (April 17, 1920), 508. Alpheus T. Mason, Harlan Fiske Stone: Pillar of the Law (New York, 1956), 143-146.

55) Mason, Harlan Fiske Stone, 150.

56) ACLU, Nationwide Spy System, 3.

57) Belknap, "Mechanics of Repression," 55-56; Donner, Age of Surveillance, 44-47.

58) "They Never Stopped Watching Us," 24-25; Belknap, "Mechanics of Repression", 55-56.

## Chapter VI

### 'They Never Stopped Watching Us':

#### FBI Political Surveillance, 1924-1936

"We never knew. . . about the way that Hoover's FBI kept track of us after the 1924 reform announcements. They never stopped watching us."

-Roger Baldwin to Alan Westin, 1977[1]

FBI and Justice Department officials have steadfastly maintained that from 1924 through 1936 Attorney General Stone's executive order effectively barred investigations of lawful political activities. Then, in August 1936, President Franklin Roosevelt, responding to the growing international crisis, primarily the rise of fascism, and concerned about its effects on American domestic politics, secretly rescinded the ban on Justice Department political surveillance. Thus, it is argued, the FBI conformed to Stone's guidelines and acted properly within the executive's inherent constitutional authority when it resumed non-criminal investigations that year.[2]

With few exceptions, historians and contemporary policy makers have agreed that the FBI did not engage in political surveillance activities until President Franklin Roosevelt formally rescinded Attorney General Stone's executive order in

August 1936. Even the "Church Committee," which conducted the most thorough congressional investigation of FBI intelligence activities to date, did not question this assumption. As a result, the committee's reports provide little new insight into the development of FBI political surveillance prior to 1936. Despite this consensus, FBI files, obtained recently through the Freedom of Information Act, confirm suspicions that FBI director Hoover misled Attorney General Stone in 1924, and, for the next twelve years, used the FBI to gather information on the activities of the Bureau's critics, and other radical political and labor organizations. The extent of this illegal surveillance has never been fully appreciated. These investigations allowed FBI director Hoover to help set the Roosevelt Administration's internal security agenda.[3]

This chapter will examine FBI surveillance of the following groups and activities: the American Civil Liberties Union, an early critic of political espionage; the Trade Union Unity League, a leftist labor organization; and mass political demonstrations. The essay will also consider the Bureau's cooperation with State Department intelligence officers who monitored the activities of United States citizens overseas, and show how such investigations were kept secret. FBI political surveillance during the first Roosevelt administration will also be examined. To fully understand the context, it is necessary to review the Bureau's initial reaction to Stone's 1924 directive.[4]



Initially, Hoover seemed eager to implement Stone's policy. On May 20, 1924, appearing before the Brockhart Committee which was investigating former Attorney General Harry Daugherty, Hoover testified that the FBI was no longer interested in political opinions. He told the committee that: "(i)nstructions have been sent to officers in the field to limit their investigations in the field to violations of (federal) statutes." He announced that in the two weeks since he had assumed office, he had fired all of the notorious "dollar-a-year men" (political cronies hired by Daugherty and Hoover's predecessor, William J. Burns) and would continue to "eliminate from the forces such deadwood as has been in the (FBI)." New emphasis, Hoover stated, would be placed on future applicants' educational qualifications, rather than their political connections. Reassuring the committee of his sincerity and commitment to Stone's reforms, Hoover repeated his earlier pledge in his closing remarks. He reassured Senator Wesley Jones (Rep., Wash.) that Bureau investigations would be limited "absolutely to violations of Federal statutes, and that will be the policy followed by this bureau." [5]

These assurances aside, Hoover fought vigorously to maintain the scope of FBI authority. Five weeks after the Brockhart hearings, Hoover sent a long memorandum to Attorney General Stone responding to charges made by the American Civil Liberties Union (ACLU). Earlier that year, in a pamphlet entitled "The Nationwide Spy System Centering in the Department of Justice", the ACLU asserted that the FBI had "created a nation-wide system of espionage on radical and labor organizations, and on

individuals connected with these movements. . . . (and) (t)heir activities. . . . constitute in affect a secret police system of a political character." In a bitter reply, Hoover advised Stone that during the past five years the Bureau had investigated only those persons and organizations that could be considered "ultra-radical", and only if "there (was) indication of a probable violation of a federal statute." Still smarting from the widespread criticism of the FBI's role in the 1920 deportation raids, Hoover defended FBI intervention in the deportation process. "In many cases", he explained, "the aliens are charged with activities inimical to our institutions and government." "This activity of the (FBI) is perfectly proper and legal as such work has always been performed upon the request of the Secretary of labor." Hoover denied that the FBI had ever wiretapped, or had used dictaphone listening devices to eavesdrop on private conversations. The FBI, Hoover continued, had not, as the ACLU had charged, seized evidence in violation of the Fourth Amendment, or employed spies or undercover agents to "incite members to unlawful acts nor to get information calculated to help break strikes or to prevent labor union organization." The FBI director concluded that "the Bureau has very rigid rules on matters of this kind", and that the ACLU's charges "cannot be proved." [6]

While Hoover's memo was primarily devoted to a detailed defense of the FBI's record, Hoover assured the Attorney General that the Bureau would conform to the new guidelines and that he had strictly prohibited surveillance of lawful political

activities. "The agents of the (FBI) have been specifically instructed within the last month to confine their activities to investigations of matters in which there appear to have been or may probably arise a violation of a federal statute." The FBI also required all new special agents to attend a training session "at which time careful attention is given to defining the limitations of the duties of a Special Agent insofar as they apply to the rights of the public citizens at large." Consequently, "no innocent or loyal American" should have "any fear or objection to" the FBI.[7]

Hoover's open-ended criticism of the ACLU in this memorandum raises the possibility that Stone and his immediate successors may have been more ambivalent toward FBI political surveillance than is usually presumed. If this indeed was the case, Hoover and his superiors left no evidence that they amended Stone's order to accommodate limited political surveillance. Perhaps there was an unofficial, or verbal, understanding between Hoover, Stone, and his immediate successors, that, under certain conditions, allowed the FBI to conduct internal security investigations even though no specific violation of the law was involved. While historians cannot dismiss this possibility, the available evidence militates against it.[8]

The heart of the issue concerned the Justice Department's position regarding American communists and the American Communist Party. The issue was particularly complex because the party's platform called for the overthrow of the existing government and

economic order. Shortly after Stone issued his order prohibiting FBI political surveillance, he asked assistant attorney general Earl J. Davis to review the "applicability of federal criminal statutes to Communist activities." On June 10, 1924, Davis reported that Communist party activities did not appear to violate any federal law. Because the FBI had been unable to prove that party members had reached a "specific and definite agreement. . . to overthrow the government," the Justice Department could not indict party members under section 6 of the Criminal code (seditious conspiracy). The courts, Davis noted, had consistently ruled that section 6 required the government to "prove a conspiracy to use force against the federal government or its officers in their execution of the law." Successful prosecution of party members under the Logan Act (1790) was also unlikely. That prohibited "communication between American citizens and foreign governments when that correspondence was contrary to the best interests of the United States." While the FBI had proof that party leaders in the United States were in close contact with the Communist International in Moscow, such communication did not violate the law because department lawyers had determined that the Soviet Union did not qualify as a de jure government as required by the law. FBI director Hoover ostensibly agreed with the findings in the Davis memorandum. On October 10, 1924, Hoover told assistant attorney general William Donovan that: "(i)t is, of course, to be remembered that the activities of the Communists and other ultra-radicals have not up to the present time constituted a violation of the federal

statutes, and consequently, the Department of Justice, theoretically, has no right to investigate such activities as there has been no violation of the Federal laws." [9]

For the next sixteen years, Hoover publicly maintained this position. For example, on May 14, 1925, FBI director Hoover informed Stone that "from time to time information concerning communist activities in the U.S. is voluntarily furnished to . . . the Bureau. However, the Bureau is making no investigations of such activities inasmuch as there is no violation of a Federal Penal Statute involved (emphasis added)." Attorneys General John Sargent (1925-1929) and William Mitchell (1929-1933) demonstrated no desire to resurrect the Bureau's anti-radical division nor was it likely that Hoover tried to persuade his superiors to initiate investigations of activities he thought to be subversive given the failure of past efforts of this sort. In fact, as we will see, Hoover went to considerable trouble to convince department officials that the Bureau was strictly following Stone's policy. [10]

Beneath the facade of cooperation and obedience, the FBI persisted in old ways. Even as acting director Hoover announced the dramatic break from past policies and publicly pledged FBI cooperation and support of the Stone directive, the FBI field office in Los Angeles forwarded to Washington headquarters hundreds of pages of reports on the activities of the local chapter of the ACLU. Captioned "Attention Mr. Hoover", these investigative reports carefully summarized the minutes of the

organization's weekly meetings, executive board meetings, the ACLU's plans for future demonstrations and litigation, the groups' financial resources and the names of important contributors. On May 23, 1924, special agent Arthur Hopkins informed the Bureau that "(t)here were about four hundred people at the (weekly) meeting of the ACLU. . . Dr. (Clinton) Taft asked that the collection be larger than usual as there was rent to pay and the cost of the programs (sic)."[11]

Official infiltration also continued. An FBI informer was a member of the group's executive board and provided the Bureau with inside information about the ACLU's policy, administrative and financial decisions. On September 26, 1924, special agent Hopkins outlined the executive board's plans to challenge compulsory military training at the University of California, labor injunctions and California's criminal syndicalist laws. Hopkins reported that the ACLU, in cooperation with the IWW, decided to "start a fight for civil liberties in Los Angeles harbor (sic)", and to sue former L.A. police chief August Vollmer for arresting and jailing peaceful picketers. "Upton Sinclair. . . promised to get for Mr. (Robert) Whitaker his list of prominent people in all the nearby towns," Hopkins concluded, "so that he could visit them to solicit their aid in his work. Informant will also get a copy of this list." [12]

At the same executive board meeting, Reverend Taft announced that he had invited federal district court judge Benjamin Bledsoe to address an open forum meeting scheduled for October 26, 1924.

On October 3, Hopkins informed FBI chief Hoover that Special Agent-in-Charge (SAC) L.C. Wheeler had "confidentially informed Judge Bledsøe (that the ACLU sponsored the open forum) and also to the character of the organization which had issued the invitation." The briefing achieved satisfactory results, and on October 9, Bledsøe decided not to address the meeting. The ACLU, the judge told Reverend Taft, is "an institution with whose plans, purposes and methods I have no sympathy at all. . . I must withdraw the acceptance I made to speak." At the judge's request, the FBI agreed "to furnish (Bledsøe) with a confidential summary of the history, activities and personnel of the ACLU." [13]

Although FBI director Hoover assured Attorney General Stone that the Bureau would no longer cooperate with local "red squads", the FBI actively solicited information from police intelligence units about radical activities. On March 28, 1925, special agent Hopkins forwarded to Washington headquarters "confidential reports covering the activities (of the ACLU and the IWW)" compiled by the Los Angeles police department. "This office and this agent work in very close cooperation (with the LAPD's radical section). . . (T)his agent knows, and assists in directing, all the operatives furnishing the data upon which these reports are based." The field office's contact with the L.A. "red squad" presumably continued well into the 1930's even though Hopkins closed the office's investigation of the ACLU in November 1925. [14]

FBI director Hoover ordered two ad hoc investigations of the New York ACLU after regular coverage ended in late 1925. On February 27, 1929, responding to a personal request from the director, New York SAC C.D. McKean conducted "a confidential undercover inquiry. . . at the main office of the ACLU." Apparently, Hoover had heard that the the New York chapter had described "white slave traffic", once the mainstay of FBI investigative work and still an important part of the annual budget request, as a "minor offense." The investigation, reflecting Hoover's prurient interests, uncovered nothing. "A search of the ACLU's file's from January 5, 1928 to February 21, 1929," McKean noted, "failed to develop any such circular as the one described by you." [15]

In March 1931, Hoover requested FBI clerks to compile a history of the ACLU and a list of the organization's leaders. On March 19, C.G. Schenken completed the report. Following a concise summary of the ACLU's positions on such issues as free speech, conscientious objection to military service, and civil rights, the memo provided biographical information, gleaned from more comprehensive dossiers, on many prominent jurists, educators and community leaders. The list included Jane Addams, Clarence Darrow, John Dewey, Ernst Freund, Charles Arden and Felix Frankfurter. Schenken's portrait of Frankfurter demonstrates the Bureau's ideological biases, its extremely narrow focus and its inability to distinguish between a reformer and a radical. Schenken referred to a letter in which Theodore Roosevelt accused Frankfurter of excusing anarchists who "threaten democracy and



civilization". In 1917, as counsel to the President's Mediation Commission, Frankfurter had found that Tom McCreary and Warren Billings had not received a fair trial. In his report, Schenken maintained that Frankfurter "accepted (Roosevelt's) characterizations as more complimentary than defamatory." Frankfurter, Schenken continued, had enthusiastically engaged in "Communist and Workers Party movements" and had also "supported and cooperated with the Socialist Party, Socialist Labor Party Workmen's Defense Conference, Labor Defense League and Communist Party." While it could be argued that this exercise did not overtly violate the Stone directive (no field investigations were conducted), it certainly demonstrates that the Bureau considered itself a political police.[16]

The monthly reports on radical activities filed by FBI field offices further support this conclusion. The summaries provided the FBI with a useful overview and improved the accessibility of information in its possession. Using these summaries, FBI clerks could compile dossiers, organizational histories and special reports in a fraction of the time it would have taken to page through case files and other records.[17]

The report submitted by special agent John Haas on radical activities in the New York area during May 1925 reflected these priorities. General categories included "Radical Activities", "Individuals", "Radical Meetings", "Negro Activities", "Japanese Activities", "Russian Affairs Abroad", and "General". The "Radical Activities" section described a May Day rally sponsored

by the International Ladies Garment Workers Union and a celebration honoring the twenty-fifth anniversary of the "Workman's Circle" held at Madison Square Garden. "The Public Speaker was Eugene V. Debs," Haas reported, "declaring that he spoke for all classes. . .when he called on the people to agitate for the release of Sacco and Vanzetti. . .and that when the working men throughout the world clasped hands they would be able to 'put an end to capitalism (sic) system, wipe it from the face of the earth and establish a working class republic throughout the world.'" In February 1926 Hoover notified the New York field office that it no longer had to compile the monthly radical report, explaining that "it is not believed its value warrants the continuation of it." [18]

FBI intimidation and harassment of the American labor movement also continued despite Attorney General Stone's opposition. Unlike his predecessors, Stone believed that the rights of workers to organize, demonstrate peacefully, picket, and strike were constitutionally protected. Hence, a primary goal of his 1924 directive was to insure strict government neutrality in industrial relations. FBI director Hoover, however, shared none of Stone's predilections. In 1919 as head of the Bureau's GID, Hoover claimed that communists inspired 75% of the strikes in the United States. Unable to separate political rhetoric from basic issues such as wages, working conditions and job security, Hoover equated labor militancy and strikes with treason. As a consequence, between 1924 and 1936, the FBI collected and analyzed information about the activities

of radical labor organizations.[91]

William Z. Foster's Trade Union Educational League (TUEL) was a primary target of FBI surveillance during this period. Founded in 1921 the TUEL supported the formation of a Labor Party, recognition of the Soviet Union and full equality for women, minority and younger workers. While many of its leaders were avowed Marxists, the TUEL initially represented a broad coalition of communist and non-communist trade union members. Not a union itself, the TUEL required members to belong to an established union, and advocated labor organization along industrial rather than trade lines. To finance its work, the TUEL relied primarily on initiation fees, membership dues and assistance from the Workers Party, but also received some support from the Red International Labor Unions (Profintern). Assistance from Profintern led the FBI to believe that TUEL was a "subversive" organization which served the interests of a foreign master and, therefore, precluded it from "indulging or participating sincerely in any American movement." [20]

In early 1922, the FBI opened an offensive against the TUEL in an effort to smash the organization before it gained any influence in the labor movement. During the campaign, the FBI hired informers, regularly disrupted TUEL meetings and compiled lengthy synopses on league activities, intentions and strategy. In August 1922 FBI agents in cooperation with local officials raided a TUEL/Communist Party strategy meeting in Bridgman, Michigan and arrested Foster and 15 other League officers under

the Michigan syndicalist law. A September 1922 report attested to the effect of the FBI's teracious efforts. The FBI agent concluded that constant surveillance had demoralized League members, "badly shaken up" League secretary Foster, and because of "talk about there being a 'traitor' high up in the (TUEL). . . (a)ll the reds are in favor of cleaning house." [21]

Following the Stone reform, the FBI found it necessary to cover TUEL affairs more discreetly. Emphasis shifted from crude, overt intimidation to an exclusive reliance on the work of paid informers. Whether for ideological or financial reasons, several TUEL officials regularly furnished the FBI with confidential information. In February 1927 an FBI informer attended a secret Communist Party/TUEL meeting in Chicago. Disturbed by a recent decline in party membership, down by almost 35% , from 11,000 to 7,000 active members, 50 party and TUEL leaders decided to emphasize the recruitment of minority and younger workers to increase party membership. "(I)t was decided," the informer advised the FBI, "that the Communist Party (and TUEL) from now on must devote at least 75 percent of its activities to trade union work." In January 1928 a confidential informer attended a TUEL conference in New York and reported that it was "most revolutionary". The delegates discussed "plans for breaking into the ranks of the American Federation of Labor", the basic strategy of the TUEL since its founding seven years earlier. Strikes led by TUEL in 1927, the informer learned, cost the League approximately \$250,000, \$100,000 of which was paid by Profintern. In a conversation with the informer, Foster

optimistically claimed that "he expected real work on a bigger scale to result from the conference." [22]

FBI surveillance extended well beyond the TUFI to include the monitoring of political meetings and public rallies sponsored by liberal and radical organizations. Prior to Stone's 1924 order, Bureau agents, assisted by local police, disrupted these meetings, but generally, FBI agents (or their hired informers) went only to jot down the names of the speakers and the main points of their addresses and to estimate the size of the audience and its reaction to the speeches. While department policy prohibited surveillance of this kind after Stone took office, the FBI collected information about various protest meetings after 1924. The Bureau's investigations of the Sacco-Vanzetti Defense Committee is a case in point. [23]

In the spring of 1927, the Sacco-Vanzetti Defense Committee hoped to mobilize public opinion to persuade responsible government officials to stay the execution of the two convicted anarchists. Mass demonstrations, the committee thought, might succeed where legal appeals had not. On April 16 and July 7, the committee sponsored rallies in New York's Union Square which drew approximately 20,000 persons. At the July 7 demonstration, Fiorello LaGuardia, Scott Nearing, Sidney Hillman and Carlo Tresca addressed the crowd before New York City police broke up the meeting with clubs and gas. FBI agent John Haas attended both events, noted the speakers' names, and summarized their speeches. [24]

FBI coverage of the Sacco-Vanzetti Defense Committee's activities intensified as the scheduled date of execution drew near. On August 6, FBI director Hoover instructed all Agents-in-charge to "make every effort to keep fully informed as to the (activities of the defense committee) in your district. . . see that every secrecy is maintained (and) keep me advised by wire of developments." Although Hoover later explained to Attorney General Sargent that these investigations were conducted to protect federal property and the lives of federal officers, several field offices indulged in general intelligence investigations which were wholly unrelated to potential violence or disorder.[25]

In the San Francisco Bay area, FBI agents contacted local "red squads" and assigned agents to work "under cover" to gather information concerning "radical activities." The St. Louis field office transmitted the names of individuals who participated in a peaceful protest a month earlier. On August 16, special agent E.J. Connelly submitted summaries of several meetings held at the Italian Fraternal Hall and clippings from the St. Louis Post-Dispatch which called for a stay of execution until new evidence could be thoroughly reviewed. "(T)he attitude of (the Post-Dispatch)", Connelly concluded, "can readily be determined." From Butte, Montana, special agent D.H. Dickerson reported that a "confidential informant" planned to attend a meeting protesting the execution. The Atlanta SAC suspected that communists had infiltrated the defense committee and informed the director that he was "making a discreet and confidential investigation" of the

matter.[26]

The Depression intensified Hoover's antipathy toward communism. As the United States slid slowly into its greatest economic crisis, and despair and public dissatisfaction with President Herbert Hoover's policies increased, many Americans took to the streets to protest unemployment and increasing poverty. The demonstrations became known as "Hunger Marches". FBI director Hoover wildly overexaggerated the Communist Party's appeal to the unemployed, fearing that it would exploit the Hunger Marches in an effort to drive a wedge between the American people and their government. Hence, the FBI closely monitored attempts to organize protests and demonstrations against the Hoover administration's economic policies.[27]

Veterans' marches were a prime investigative target. In May 1930, word reached FBI director Hoover that the Communist Party had shown considerable interest in organizing ex-servicemen who had not receive government pensions. I. Weiss, secretary of the Workers Ex-Servicemen League (WESL), contacted Charles Gwynne of the New York Chamber of Commerce and offered to sell Gwynne information concerning communist activities in the WESL. Gwynne, a former intelligence officer in the Army, informed the FBI of Weiss's offer. On May 28, special agent C.D. McKean advised Hoover that, having conferred with "our own confidential informant (in the Communist Party)" and other intelligence officers in the New York area, Weiss "is a fraud and merely seeking a position", and should not be hired as an FBI

informer.[28]

While the New York office chose not to employ Weiss, other paid informants in the Communist Party kept the FBI up to date on the WESL's plans. On January 20, 1931, in a letter to the State Department, Hoover concluded that the WESL was an "active Communist unit. . . and is at present trying to organize an impressive number of ex-servicemen for the purpose of a 'Hunger March' to Washington. The campaign is conducted by the league under the direction of the Central Committee of the Communist Party." [29]

In the spring of 1932, when the Bonus Army started to assemble on Anacostia Flats in Washington, D.C., FBI director Hoover joined the chorus of cabinet and other officials who advised the President that the demonstration was a communist-inspired plot. By mid-summer, over 20,000 unemployed veterans had set up a make-shift camp which swiftly became a major political liability to the administration, symbolizing its inability to address social and economic problems effectively. In late July, exasperated by the refusal of the Bonus Army to leave the capital peacefully and convinced that "subversive influence obtained control" of the demonstration, President Hoover instructed the army "to restore order". On July 28, regular army units, using cavalry, tanks and tear gas, routed the veterans, burned their temporary shelters and, in the process, killed four and wounded hundreds. [30]



Following the riot, the press roundly criticized the President for failing to deal with the veterans more compassionately. On August 1, in an effort to allay this criticism, the President called the heads of several investigative agencies, including FBI chief Hoover, to the White House and asked them to initiate investigations of communist infiltration of the Bonus Army. FBI field agents attended meetings protesting the administration's brutal treatment of the Bonus marchers and, assisted by railroad police, carefully monitored the movement of Bonus marchers through important rail yards. Chicago SAC W.A. McSwain assigned several agents to attend rallies and contacted H.A. Kline of the Hargrave Detective Agency and Lieutenant Mike Mills of Chicago's "red squad" to solicit information about communist influence in veterans organizations. New York SAC C.A. Appel informed the Bureau that at a rally held in Union Square the "WESL and the Communist party openly accepted responsibility for the bonus march". "I instructed (special agent) Quinn to have his agents prepare affidavits of what took place last night" and to make general inquiries at banks used by the WESL "in order to prove that the source of (their) money was the Communist Party, or other Communist organizations or individuals." The FBI investigation, however, did not turn up any evidence, admissible in court, to prove that the Bonus march was "a red plot" and the federal grand jury investigating the riot indicted only three men, none of whom were communists.[31]

For the next two years, the spectre of a second Bonus Army haunted FBI director Hoover. Field offices remained on constant alert and were instructed to report any attempt to organize a similar demonstration. On November 23, 1932, St. Louis SAC E.M. Ladd summarized informers' reports on Communist Party involvement in the proposed National Hunger March on Washington. Scheduled for December 5, the march drew about 3500 demonstrators who camped in a secluded park in the Northwest section of the city. On December 6, the marchers presented Congress a petition urging it to adopt a comprehensive unemployment insurance act. Later that same day, the demonstrators peacefully disbanded, leaving the city under police protection. A year and a half later, on May 2, 1934, Hoover ordered FBI field offices to survey "all of the principal cities of the U.S. to determine the number of Bonus Marchers reported to be en route to Washington." In Salt Lake City, special agent Louis Wine conducted "an under-cover investigation of the WESL" and concluded that the "organization was engaged in communistic activities and probably the dissemination of communistic propaganda." On May 8, the New York office reported that 1500 "Bonus advocates", who were "affiliated with (the) Communist Party of America" had left the city for Washington. On May 18, 650 "roughly clad men, a handful of women, a small boy and a dog", marched past the White House and the Capitol building, stopping only to pay their respects to those who had died in the 1932 riot.[32]

During the early post war years federal officials were quick to blame the Soviet Union for inspiring widespread domestic unrest. Believing that radical organizations were controlled and financed by the Bolsheviks, the FBI shared general intelligence information with the State Department. At the Bureau's request the State Department monitored the activities of American citizens travelling abroad. Subjects of State Department surveillance included labor leaders, academics, and such prominent critics of the Justice Department as Felix Frankfurter and Winburne Hale. An amendment to the 1916 Appropriations Act allowed the Secretary of State to request FBI investigations in special instances, for example, the dynamiting of a consulate or the suspicious movements of a diplomatic attache. But the informal exchange of intelligence information could not be justified under this law. Thus, FBI cooperation with the State Department was predicated upon the assumption that an individual "who advocates Marxism-Leninism might just as well be working as an agent of a foreign power because he is aiding his cause." The problem of course was that Hoover lumped all advocates of change together.[33]

Though Stone's 1924 directive did not explicitly state it, the intent was to preclude the FBI from sharing information about lawful political activities with the State Department or other federal agencies. Hoover addressed this subject in his July 21, 1924 memorandum to Stone, assuring the Attorney General that investigations conducted for the State Department were limited to violations of the passport laws. "The system, in fact, was based

upon the apprehension of fugitives applying for passports to leave the country", Hoover explained, "and is still operated for that purpose." In December 1924 the Attorney General asked FBI director Hoover "whether the Bureau would have the authority to investigate Soviet and Communist activities within the United States for the State Department in connection with the question of the recognition of the Soviet Government." Hoover informed the Attorney General of the provisions of the 1916 Appropriations law, adding that the FBI could conduct such investigations only "upon formal request by the Secretary of State and approval of the Attorney General (emphasis added)."[34]

Despite these assurances, FBI director Hoover independently solicited information from, and provided data to, the State Department from 1924 through 1936. On October 5, 1927, Hoover informed Robert F. Kelley, chief of the State Department's Division of Eastern European Affairs, that the executive board of the TUEL would meet in December 1927 to discuss "the organization of Industrial Unions, a Labor Party", and a strategy to affiliate "Workers of other countries for the joint defense of common interests and establishing World Trade Union Unity." A month later, Hoover reported to Kelley that the "TUEL now controls the entire membership of all New York unions." The TUEL was about to implement plans, Hoover concluded, "to take over the executive power of the unions in this country." [35]

Through his confidential informants in the British labor movement, Kelley occasionally obtained TUEL documents which the FBI had been unable to secure. On October 4, 1929, Kelley sent Hoover a copy of the minutes of the TUEL's executive board, meeting held in Cleveland in September. Prepared for exclusive use by the executive board, the minutes detailed TUEL finances and expenditures and its strategy for organizing workers in large American industries. Through these same channels, Kelley was able to obtain information concerning other labor union activities. In October 1929 Kelley sent Hoover a copy of a letter from the Southern Organizer of the National Textile Workers appealing for money to assist in the defense of workers charged with offenses stemming from the Gastonia, North Carolina strike. Two and a half years later, in January 1932, Kelley forwarded Hoover a copy of the National Miners Union constitution, noting that the organization "is the most active of all communist unions in the United States at the present time." [36]

Hoover, then, had the best of both worlds: a clean public image based upon efficient conduct of the FBI's legitimate business and the advantages of surreptitiously continuing illegal practices. But it was a delicately maintained world. While the FBI engaged in political surveillance in violation of department policy, director Hoover actively opposed legislation which would have required the Bureau to investigate subversive activities if Congress did not first make these activities illegal. In 1930, Representative Hamilton Fish, Jr., chairman of the special

committee investigating communist activities in the United States, sponsored a bill requiring the FBI "to investigate 'communist and revolutionary activity.'" In his appearance before the committee, director Hoover argued that while communist doctrine posed a serious threat to the nation's security, the Bureau should not be required to investigate communists until Congress adopted a peacetime sedition law which clearly prohibited communist activities. "If the Bureau is given the power to investigate (subversive activities)" in the absence of such a law, Hoover insisted, "it would be in a position of having a mass of material with which nothing could be done." In January 1932 Hoover explained to Attorney General Sargent that Congressional authorization of political surveillance would jeopardize the Bureau's effectiveness because the legislation would lead to allegations that the FBI was a political police whose very existence threatened Constitutional rights: "The Department and the Bureau would undoubtedly be subject to charges in the matter of alleged secret and undesirable methods in connection with investigative activities, as well as to allegations involving charges of the use of 'Agents Provocateurs'." [37]

Hoover's fervently anti-communist convictions best explain why he took risks to collect ostensibly useless information. His political views had been forged in the heat of the post-war Red Scare. He believed that communist conspirators had infiltrated every important government, educational and religious institution and "threaten the happiness of the community, the safety of every

individual, and the continuance of every home and fireside. They would destroy the peace of the country and thrust it into a condition of anarchy and lawlessness and immorality beyond imagination." From 1919 through 1924, under GID chief Hoover's direction, the FBI had successfully disrupted the activities of radical political and labor organizations. Although Stone's order stayed similar aggressive intelligence activities after 1924, Hoover believed that it would be irresponsible for the Bureau to ignore the activities of individuals and organizations "antagonistic to the conception of American principles." Despite his testimony before the Fish Committee, Hoover presumed that any information gathered clandestinely was "intrinsically valuable" and would be useful in some future emergency. Thus, when the FBI drew up a 1943 custodial detention list, Bureau employees relied, in part, on information about an individual's participation in a 1932 hunger march to justify placing that person on the detention index.[38]

In view of the high stakes, the Bureau had to keep its political intelligence operations absolutely secret. To achieve this goal, FBI director Hoover consciously sacrificed volume for confidentiality. The Bureau assigned only a limited number of agents to full-time internal security work and took the additional precaution of replacing these agents on a regular basis. Hoover realized that a disgruntled agent who knew too much could undermine the entire program by leaking important documents to a powerful congressman or a respected journalist. If unauthorized agents requested permission to initiate an

investigation of political activities, the director would personally quash the request and explain the "misunderstanding". On September 18, 1926 Detroit SAC H.W. Kage informed Hoover that he anticipated the TUFL to "spread propaganda" at an American Federation of Labor convention to be held the following week in that city. Kage, noting that special agent Haas of the New York field office "is expecting an investigation and report by this office", asked the director if the Bureau "desired that this matter be covered." On September 25, Hoover notified Kage that "(n)o investigation of so-called radical activities should be undertaken by your office unless there is a violation of a Federal statute involved", adding that Haas's report had been "transmitted to you merely as information, not for any investigative attention by your office." Two years later, in an effort to tighten security, Hoover relieved the New York field office of its internal security responsibilities and ordered that informers in the TUFL and other communist organizations report directly to Washington headquarters.[39]

Hoover's fears that one of his agents might blow the whistle and expose illegal FBI surveillance were not entirely groundless. On January 21, 1927, Franklin Dodge, a former FBI agent from Grand Rapids, Michigan, met with Senator Thomas Walsh, for years one of the Justice Department's harshest critics. Dodge told Walsh privately that the Bureau had continued to investigate radical activities after 1924 and had shared that information with the State Department's Eastern European Division. Dodge also informed Walsh that since at least 1920 the FBI had supplied



"friendly" journalists with information from its extensive files in return for favorable publicity. He later sent Walsh a photostatic copy of a letter to prove this allegation. Dodge further alleged that Hoover had misused Bureau funds, spending it for private vacation and travel expenses. Nothing came of the meeting, except a promise from Walsh that when the Democrats took power once again he would see to it that Bureau policies would be fully-reviewed and Hoover fired.[40]

Consistent with his public statements, Hoover refused private requests to investigate political activities. On January 10, 1927, Earl Hauck, a former FBI agent and attorney to the United Mine Workers, informed the Bureau's Indianapolis office that he expected "many of the active and most resourceful Communists" to attend the upcoming UMW convention. Hauck invited the Bureau to assign under cover agents "to watch the movements of the Communists at the convention." If the Bureau cooperated, he offered to exchange information gathered by his own under cover operatives. If necessary, Hauck offered to travel to Washington to personally brief FBI chief Hoover and finalize arrangements with him. On January 18, Hoover told Indianapolis SAC T.E. Fayliss to "advise Mr. Hauck that this Bureau is unable to take any investigative action except in cases where there is reason to believe that the existing Federal laws. . . have been violated." On January 15, 1935, Representative Louis Ludlow of Indiana phoned the Bureau to find out if the IUWL was a "communist organization". After consulting assistant director E.C. Tamm, special agent E.L. Fagan returned Ludlow's call and

informed him that the FBI "had made no investigation of the TUEL". It was his personal opinion, Façan continued, that the TUEL "was generally thought of as a Communistic organization," but that the FBI "could make no official statement regarding this organization inasmuch as we had not conducted any investigation in connection therewith." [41]

In an imaginative strategy, FBI chief Hoover used unsolicited requests to demonstrate to his superiors that the Bureau strictly followed department regulations. Upon receiving a request for an FBI investigation of political activities, Hoover would forward the letter to the Attorney General, reminding him that the Bureau lacked jurisdiction. On August 21, 1929, Curtis Bush, a businessman from the midwest, informed the Justice Department that the TUEL was "very busy in trying to get recruits and organize some industries" in the area. "If it is at all possible", Bush declared, "I think the Government should send in a trained investigator to keep track of the activities of these Communists". In an August 26 memorandum, FBI director Hoover advised assistant attorney general Oscar Lohring that the FBI could not investigate Bush's charges. "This Bureau, as you know, does not investigate any matters unless (a federal law has been violated)." "Communist activities, including the activities of the TUEL, are not matters which have received. . . the investigative attention of this Bureau." [42]

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Although Stone's order was not officially revised until August 1936, FBI surveillance policy changed substantively during the second year of the Roosevelt administration. With the exception of the investigation of the Bonus Army, Presidents Coolidge and Hoover did not find it necessary to use the FBI to collect general intelligence information; yet it would be a mistake to conclude that this stemmed from a genuine commitment to free expression and association. Coolidge and Hoover, for example, had no fundamental objection to state suppression of radicals, the use of labor injunctions to break strikes, blacklisting and other corporate union-busting activities. Rather, Stone's reforms fit the Republican model of federalism which emphasized decentralization of power. Franklin Roosevelt brought to the Presidency a more spacious view of federal and executive authority than either of his two Republican predecessors. On May 18, 1934, Roosevelt signed into law a series of bills which greatly increased the scope of FBI jurisdiction over criminal offenses. The new laws, for example, broadened the Bureau's jurisdiction in cases involving extortion, kidnapping, fugitives, and the killing of federal officers. Ten days earlier, without any of the fanfare that occasioned the signing of the new additions to the federal criminal code, Roosevelt unilaterally extended the FBI's authority to investigate political activity, and by the end of the year, Stone's order had been reduced to a dead letter. FBI chief Hoover relished his new role as the President's intelligence valet and oversaw these investigations with great enthusiasm.[43]

A little less than two months before Roosevelt's inauguration, Adolph Hitler and his Nazi Party took power in Germany. Almost immediately the spread of fascism threatened the future of European and world peace. In the United States, ultra-rightists, many of whom openly sympathized with the Nazis, complained that President Roosevelt and his administration were, among other things, tools of the international communist conspiracy and were planning to turn the United States over to the Soviet Union. While much of the right-wing rhetoric was entirely irrecusable, ties between the German government and several rightist splinter groups, including the German-American Bund, led to suspicions that Bundists were "Fifth Columnists", ready to bore from within to undermine American faith in democratic institutions. Many important federal officials, including the President himself, shared these suspicions, and on May 8, 1934, Roosevelt convened a conference at the White House to discuss the problem. At the meeting, which was attended by Attorney General Homer Cummings, Secretary of the Treasury Henry J. Morganthau, Secretary of Labor Frances Perkins, Secret Service chief W.H. Moran and FBI chief Hoover, Roosevelt instructed the FBI to gather general intelligence information on the activities of the Nazi Movement in the United States and determine if the German embassy or consulate "may have any connection with the [group]." In their search for a jurisdictional basis for the investigation, the conferees decided that the FBI should cooperate with the Immigration Bureau, then still a part of the Labor Department, "since the only federal law

that might be applicable to (the investigation) at the present time would be the Immigration law." Two days later, FBI director Hoover ordered the Bureau's field offices "to initiate an intensive investigation of activities of the Nazi group. . . (and) should be considered as a so-called intelligence investigation." [44]

In a further extension of the Bureau's authority, Roosevelt asked FBI director Hoover to investigate a domestic labor crisis. Unlike the investigation of American Nazis, the President made no attempt to justify the jurisdictional basis of the inquiry. On September 1, 1934, Francis J. Gorman, vice-president of the United Textile Workers (UTW) called for a general strike against mills from Maine to Georgia. Throughout the summer mill owners had failed to bargain in good faith. They refused to raise wages, improve working conditions and comply with section 7(a) of the National Recovery Act. By Tuesday, September 4, over 175,000 workers had joined the picket lines and within several days, another 200,000 persons walked off their jobs. "The general strike in the textile industry," Robert B. Brooks writes, "was unquestionably the greatest single industrial conflict in the history of American organized labor." [45]

In Rhode Island, where the industry employed 50,000 workers, members of the UTW picketed every mill. Governor T.H. Green, claiming that the Communist Party had inspired the walkout, called out the National Guard to suppress the strike. The display of force "triggered violence". Rioting spread from

Saylesville to Woonsocket and threatened several nearby towns. The state legislature refused Governor Green's request to ask for federal assistance to suppress the strike and, even though federal law required the legislature's approval, Green appealed to the President to dispatch federal troops to Rhode Island.[46]

Upon receiving a telegram from Governor Green which maintained that the "'Communist party and the lawless element' were 'destroying cities and towns'", Roosevelt asked the FBI to investigate the "actual conditions existing in the strike area". On September 14, Hoover reported that following initial confrontations, conditions had stabilized and that his agents had "observed nothing which could possibly justify the use of Federal troops." Although the memo accurately reported important information concerning a potentially serious crisis, Hoover inferred that the violence was politically motivated. "Numerous Communists from New York and Connecticut have been arrested throughout the state", Hoover claimed, adding that "[c]onsiderable Communist literature has been found in the Communist headquarters in Providence." [47]

The Roosevelt White House also used the FBI to screen organizations that had criticized administration policies. On December 5, 1934, Wilma Meredith, secretary to White House aid Stephen Early, phoned FBI director Hoover to solicit information about the ACLU. The ACLU's executive board had requested a meeting with the President and invited him to prepare a message outlining the administration's positions on such politically

sensitive issues as the rights of labor to organize, and the proposed federal anti-lynching law for an upcoming conference on the New Deal and civil liberties. While the ACLU believed that some New Deal legislation could have an important impact on the protection of individual rights, especially section 7a of the National Recovery Act, the organization withheld any general endorsement of the Roosevelt program. "The enormous increase in the power of the federal government under New Deal policies carries with it inevitable fears of inroads on the right of agitation", the ACLU reported in 1934. "Alarms are widely expressed over alleged dictatorship by the President, the abrogation of states' rights and the vast economic powers of the federal government, reaching out to every home and business in the land." FBI director Hoover agreed to "prepare" a background memorandum for Early's use, but advised Meredith that "this organization does not bear a particularly good reputation. . . (and) that a message from the President might dignify an organization which should not be dignified." In the recent past, Hoover continued, the ACLU had sponsored "vigorous and vicious campaigns for what they call 'civil liberties'" and, for that reason, a statement by the President "might offend many who hold to conservatism and law enforcement." The White House apparently agreed with Hoover that Presidential recognition of the ACLU would have serious political consequences, and Roosevelt neither met with ACLU representatives to discuss civil liberties issues or sent a message to the conference.[48]

By 1936, then, Roosevelt and Hoover had developed an "understanding" unique in the relationship between the President and agency heads, who normally are responsible to the relevant cabinet officers. Roosevelt knew that Hoover was not overly concerned with formality and would ignore jurisdictional problems that would have otherwise barred FBI intelligence investigations. Hoover, in turn, understood that the President, like himself, was given to "a natural affinity for the intelligence process, a gossip and voyeuristic delight in the insider's role, and a callousness to the claims alike of privacy and free expression." Thus, as his fears of "subversive activities" mounted, Roosevelt consulted with FBI director Hoover, not his superior, Attorney General Cummings, or Congress. During his August 1936 meeting with Roosevelt, Hoover was able to persuade him that labor militancy and domestic radicalism, not simply Nazism, constituted a serious threat to the nation's security. Following this discussion, Roosevelt officially (if secretly) rescinded the department bar on non-criminal investigations, issuing the FBI an open-ended mandate to scrutinize political and labor activities.[49]

One of the most striking and disturbing characteristics of FBI political surveillance between 1924 and 1936 is the lackadaisical attitude of Congress and the Executive. In 1924, when Stone announced his reform, he took no positive steps to prevent the FBI from simply continuing political investigations under a new guise. He did not, for example, force the FBI to turn over to him documents which would have proven the political



nature of many FBI investigations and that Hoover, despite his disclaimers, directed many of these illegal investigations. Congress did little better. Following its investigation of former Attorney General Daugherty and the politicization of the FBI under William Eurns, Congress allowed the executive to clean-up its own house and did not seriously consider legislation to prevent illegal FBI surveillance. This abdication of authority would have serious consequences, when on the eve of the Second World War, the FBI intensified its surveillance of lawful political activities, and, on its own initiative, developed a custodial detention plan to hold "subversives" in case of an emergency. But to understand how the FBI gained this discretionary authority in the security field, it is necessary to examine the Bureau's changing public image during the 1920's and 1930's and its rise to national prominence. It is to these issues we now turn.[50]

## NOTES

1) "'They Never Stopped Watching Us': A Conversation Between Roger Baldwin and Alan F. Westin", Civil Liberties Review (November/December 1977), 25.

2) See "An Analysis of FBI Domestic Security Intelligence Investigations: Authority, Official Attitudes, and Activities in Historic Perspective (sic)," Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Hearings, vol. VI, FBI, 94th Cong. 1 sess. (1975), 547-575.

3) A partial list of historians reaching this conclusion includes Frank J. Donner, The Age of Surveillance: The Aims and Methods of America's Political Intelligence System (New York, 1980); Athan Theoharis, Spying on Americans: From Hoover to the Huston Plan (Philadelphia, 1978); David Wise, The American Police State (New York, 1976); Morton Halperin, et al., The Lawless State (New York, 1976); Sanford Ungar, FBI (Boston, 1976); Fred J. Cook, The FBI Nobody Knows (London, 1964); William Preston, Jr., Aliens and Dissenters: Federal Suppression of Radicals, 1903-1933 (Cambridge, 1963); Donald Johnson, The Challenge to American Freedoms: World War I and the Rise of the American Civil Liberties Union (Lexington, 1963); Paul Murphy, The Meaning of Free Speech: The First Amendment From Wilson to

FDE (Greenwich, 1974); Don Whitehead, The FBI Story: A Report to the American People (New York, 1956); Max Lowenthal, The Federal Bureau of Investigation (New York, 1950). Several authors have noted in their footnotes that the FBI investigated political activities between 1924 and 1936, but none offer a sustained analysis of these investigations. See especially, Theoharis, Spying on Americans, 255-56; Preston, Aliens and Dissenters, 336; Jerold Auerbach, Labor and Liberty: The LaFollette Committee and the New Deal (Indianapolis, 1966), 30. Senate Select Committee to Study Governmental Operations With Respect to Intelligence Activities, Final Report, Intelligence Activities and the Rights of Americans, Book II, 94th Cong., 2d Sess. (1976); Final Report, Supplementary and Detailed Staff Reports on Intelligence Activities and the Rights of Americans, Book III, 94th Cong., 2d Sess. (1976).

4) Freedom of Information Act, 5 U.S.C.552. Because of the processing fees involved in my more extensive FCIA request, this essay will be based on FBI files released by the Bureau prior to May 1981. A fee waiver request and appeals are pending, and if granted, files compiled on more than 20 organizations and 36 individuals will be forthcoming. Files on the following organizations have been released as a result of my own and others' FCIA requests: Workers' Ex-Servicemen's League, Trade Union Educational League (re-named the Trade Union Unity League in the late 1920's), United Mine Workers, United Textile Workers, Unemployed Citizens Council, American Civil Liberties Union, and the Sacco-Varzetti Defense Committee. FBI files on the ACLU are

located at the ACLU's New York offices and can be seen upon request. The files of the Sacco-Vanzetti Defense Committee are in the possession of the Boston Public Library and can be seen upon request. The remainder are in the author's possession.

5) Senate Select Committee on the Investigation of the Attorney General, Hearings, 68th Cong. 1 sess. (1924), 3251-3263.

6) Hoover to Storer, 7/31/24, FBI files, ACLU. The ACLU, Hoover claimed, was "consistently and continually advocating . . . the attempt on the part of the communistic element to paralyze labor unions." The ACLU's existence, Hoover continued, "depends largely upon its continued agitation and the fostering of the confusion in a defense of the terms 'liberty' and 'license'." Hoover to Storer, 7/31/24, FBI files, ACLU. Recent research demonstrates that contrary to Hoover's denials in the 7/31/24 memorandum, the FBI regularly eavesdropped, wiretapped, broke-in to houses, meeting halls, and offices to gather evidence, hired informers who became agent provocateurs, and spied on a wide variety of lawful political activities. See especially, David Williams, "'Sowing the Wind': The Deportation Raids of 1920 in New Hampshire", 34 Historical New Hampshire (Spring 1979), 13-18; "'They Never Stopped Watching Us': A Conversation Between Roger Baldwin and Alan Westin", Civil Liberties Review, 20; Donald Johnson, Challenge to American Freedoms, 75-78. Also see, National Popular Government League, To the American People: Report Upon the Illegal Practices of the United States Justice

Department (Washington, D.C., 1920), 29-30.

7) Hoover to Stone, 7/31/24, FBI files, ACIU.

8) Athan Theoharis, in Spying on Americans, raises the possibility that Cold War presidents might have given similar verbal authorization to the FBI to initiate custodial detention programs. See pp. 40-64. There is at least one example, however, of Hoover attempting to persuade an Attorney General that there was something insidious about an organization like the ACLU. On September 9, 1924, Hoover sent Stone a copy of a letter written by ACLU director Roger Baldwin to Clinton Taft of the California CIU which outlined the organization's official policy on defending the right of communists to free speech and association. The letter was stolen sometime in August 1924 by one of the Bureau's undercover agents still operating within the group. Hoover told Stone that the letter indicates "very clearly what the views of the American Civil Liberties Union are with regard to the right of freedom of speech and freedom of press." There is no indication in the departmental records that Stone ever read the memo, or if he did, what he replied. Hoover to Stone, 9/9/24, Justice Department file 202600-823, Record Group 60, National Archives, Washington, D.C. Also see note 40, supra.

9) William Preston, Aliens and Dissenters, 241-243; Supplementary and Detailed Staff Reports on Intelligence Activities and the Rights of Americans, 389.

10) Senate Select Committee, Hearings, 553. Little is known about Hoover's relationship with Attorneys General Sargent and Mitchell. Nothing in the record, however, suggests that Hoover ever broached the subject of political surveillance with either man.

11) Hopkins to Hoover, 8/23/24, FBI files, ACLU.

12) Hopkins to Hoover, 9/26/24, FBI files, ACLU.

13) Hopkins to Hoover, 9/26/24; Hopkins to Hoover, 10/3/24; Bledsoe to Taft, 10/9/24; FBI files, ACLU.

14) Hopkins to Hoover, 3/28/25; "American Civil Liberties Union. Southern California Branch. Activities. L.A, California. Jan'Feb'March 1925"; FBI files, ACLU. "This case", Hopkins reported, "is being closed for the reason that no special investigations of the activities in questions are being made. . . Case will be re-opened in the event anything of importance develops." The San Francisco, Chicago, New York, New Haven and Pittsburgh field offices also maintained close ties with local "red squads" throughout the period. See Sacco-Vanzetti Defense Committee, FBI files, Boston Public Library; WESL FBI files, author's possession.

15) McKean to Hoover, 2/27/29, FBI files, ACLU.

16) Schenken to Hoover, 3/19/31, FBI files, ACLU.

17) Annual Report of the Attorney General, 1920 (Washington, 1921), 172-75; Annual Report of the Attorney General, 1921 (Washington, 1922), 128-31; Skully to Hoover, 8/15/21, FBI file ES 202600-33-302, FBI Investigative Files, 1908-1922, National Archives, Washington, D.C.; Dodge to Walsh, 2/2/27; GID Bulletin, 6/25/21, Box 278, Thomas Walsh Papers, Library of Congress, Washington, D.C.

18) Haas Report, 5/31/25, FBI files, ACIU. Hoover to F.A. Darling, 2/23/26, FBI files, Special Reports of Radical Activities, 61-23-322, author's possession.

19) See Alpheus Mason, Harlan Fiske Stone: Pillar of the Law (New York, 1956), 255-260, 550-555. Irving Bernstein, The Turbulent Years: A History of the American Worker, 1933-1941 (New York, 1969), 635-681; Williams, "'Sowing the Wind'", 17. Under the direction of GID chief Hoover, the FBI infiltrated every major labor organization from 1919-1924. See General Index, FBI investigative Files, 1908-1922, National Archives, Washington, D.C. See also, J. Edgar Hoover, Masters of Deceit (New York), 67-71. In 1927, FBI agent John Haas labeled an investigation of the TUUL under the caption "Treason".

20) William Z. Foster, History of the Communist Party of the United States (New York, 1952), 196-210; Daniel Bell, Marxian Socialism in the United States (Princeton, 1967), 341-345; Irving Howe and Lewis Coser, The American Communist Party (New York, 1962), 236-239; "Attorney General Palmer on Charges Made against the Justice Department by Louis F. Post and

Others", House Rules Committee, Hearings, 66th Cong., 2d Sess. (1920), 154.

21) Michael Belknap, "The Mechanics of Repression: J. Edgar Hoover, the Bureau of Investigation and the Radicals, 1917-1925", Crime and Social Justice (Spring/Summer 1977), 52-53; Morton to Hoover, 9/5/22, FBI files, TUEL, author's possession.

22) Feyronnin to Hoover, 2/18/27; Haas to Hoover, 1/30/28; FBI files, TUEL.

23) Paul Murphy, World War I and the Origins of Civil Liberties in the United States (New York, 1979), 71-132; Thomas Lawrence, "Eclipse of Liberty: Civil Liberties in the U.S. During the First World War", 21 Wayne Law Review (1974), 33-112; H.C. Peterson and Gilbert Fite, Opponents of the War: The Story of the Persecution of Anti-War Groups (Madison, 1957); FBI Investigative Files, 1908-1922, National Archives, Washington, D.C.

24) Louis Joughin and Edmund Morgan, The Legacy of Sacco-Vanzetti (Princeton, 1978), 254-55; Haas Report, 4/20/27, 7/11/27, FBI files, Sacco-Vanzetti Defense Committee.

25) Hoover to SAC's, 8/6/27; Hoover to Sargent, 10/10/27, FBI Files, Sacco-Vanzetti Defense Committee.

26) Wire to Hoover, 8/15/27; Connolly to Hoover, 8/11/27; DeNett to Hoover, 8/23/27; Dickerson to Hoover, 8/15/27; FBI Files, Sacco-Vanzetti Defense Committee.



27) Irving Bernstein, The Lean Years: A History of the American Worker, 1920-1933 (Boston, 1970), 415-455; Arthur Schlesinger, Jr., Crisis of the Old Order, 1919-1933 (Boston, 1957), 166-76, 248-69.

28) McKean to Hoover, 5/28/30; Weiss to Gwynne, undated; FBI files, WESL, author's possession.

29) Hoover to Kelley, 1/20/31, FBI files, WESL.

30) Sarford Ungar, FBI, 59; Donald J. Lisio, The President and Protest: Hoover, Conspiracy and the Bonus Riot (Columbia, 1974), 229-230, 245-247.

31) Fay to Hoover, 7/2/33; Appell to Hoover, 7/31/33; McSwain to Hoover, 8/1/32; Nalls to Hoover, 8/8/32; Quinn to Hoover, 8/1/32, 11/23/32; Durn to Hoover, 8/8/32, 8/31/32; Connelly to Hoover, 8/1/32. FBI files, WESL.

32) Ladd to Hoover, 11/23/32; New York Times, 12/7/32, 3; 12/5/32, 1; Hoover to Howe, 8/2/34; Reinecke to Hoover, 5/3/33; Dowd to Hoover, 5/9/34; Little to Nathan, 5/9/34; Fay to Hoover, 5/9/34; New York Times, 5/4/34, 10; 5/12/34, 2; 5/19/34, 14.

33) Annual Report of the Attorney General, 1920 (Washington, 1921), 178-79; Annual Report of the Attorney General, 1921 (Washington, 1922), 130-31; Corner, Age of Surveillance, 17-20. See also, David Caste, The Great Fear (New York, 1978), 115; Joan Jensen, Price of Vigilance (Chicago, 1969), 14-16. One such

memorandum caused FBI director Hoover some consternation forty years later. In 1961 Harold N. Arrowsmith, Jr. uncovered in the State Department records in the National Archives a letter from Hoover to W.L. Hurley in which Hoover claimed that Felix Frankfurter was involved in attempts to spread Bolshevik propaganda. Arrowsmith, who the Bureau claimed to be "psychotic, extremely pro-Nazi and anti-Semitic," circulated a copy of the letter in an attempt to discredit then associate Justice Frankfurter. Willis A. Carto, chairman of the Liberty Lobby, received a copy of the memo and brought it to the attention of Representative James C. Davis (Dem., Ga.) and Senator Strom Thurmond (Dem., S.C.). Davis and Thurmond then asked the FBI to produce a copy of the letter in an effort to determine its authenticity. The Bureau denied the request, telling the congressmen that such action would violate agency policy. In a telephone conversation with Frankfurter, Hoover denied that he had ever seen, much less written, the letter, and that if he had "I never would have signed it." Hoover further claimed that although the letter was indeed signed "J.E. Hoover," he had always signed his letters "J. Edgar Hoover." Such an explanation was, of course, nonsense. See, for example, a similar letter to Hurley which was also signed "J.E. Hoover," in BI file OG 213251, 1/18/21, in which Hoover asked Hurley to investigate a trip to London by Swinburne Hale. Frankfurter, who had no idea that he had been investigated by the Bureau in the early 1920's, bought the story, telling Hoover that "I'm glad someone is 'protecting' me." Following the incident, Robert H. Bohmer, the Archivist of

the United States, assured the Bureau that the Archives would "continue to restrict FBI documents regardless of age." DeLoach to Mohr, 9/7/61; Hoover to Tolson, et al., 9/25/61; Jones to DeLoach, 10/19/61; Frankfurter to Hoover, 9/20/61; FBI files, Felix Frankfurter, in author's possession.

34) Hoover to Stone, 7/21/24, ACLU files; Supplementary and Detailed Staff Reports on Intelligence Activities and the Rights of Americans, 389-390.

35) Hoover to Kelley, 10/5/27, 11/22/27, FBI files, TUEL, author's possession.

36) Kelley to Hoover, 10/4/29, 1/12/32, FBI files, TUEL.

37) Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Hearings, FBI, VI, 94th Cong. 1 Sess. (1976), 555-557; Donner, Age of Surveillance, 47-51.

38) "Attorney General A. Mitchell Palmer on Charges Made against the Justice Department by Louis F. Post and Others", House Rules Committee, Hearings, 66th Cong., 2d Sess. (1920), 154; Donner, Age of Surveillance, 154. "(P)olitical surveillance", Donner writes, "is a continuous process of people watching conducted in many cases for years, in order to develop information for use at some time in the future. . . (and) (i)nfornation derived from clandestine sources is assumed to be intrinsically valuable - else why go after it." Donner, 24-25. The FBI's custodial detention plan is discussed in considerable

detail by Athan Theoharis in Spying on Americans, 40-64; "The Truman Administration and the Decline of Civil Liberties: The FBI's Success in Securing Authorization for a Preventive Detention Program", Journal of American History (Spring 1978), 1010-1030; Robert Goldstein, "The FBI's Forty-Year Plot", The Nation (July 1, 1978), 10-15. Seattle Field office to Washington, 7/8/43, FBI files, UCL, author's possession. The name of the individual was withheld by the FBI under section b(7)(c), Freedom of Information Act, 5 U.S.C. 552.

39) Kace to Hoover, 9/18/26; Hoover to McKean, 2/25/26, FBI files, TUEL.

40) Dodge to Walsh, 2/2/27; Brennan to Dodge, 11/22/20; Walsh to Baker, 2/9/26; Walsh to Messervy, 3/5/26; Walsh to Durkrow, 3/25/26, box 278, Walsh MSS, Library of Congress, Washington, D.C. In early 1933 President-elect Roosevelt nominated Walsh to head the Justice Department. Since Walsh's contempt for Hoover and the FBI was no secret, it appeared that Hoover's days at the Bureau were numbered. On March 2, 1933, however, Walsh died en route to the inauguration and Hoover survived the scare. Philadelphia Inquirer, 3/3/33; FBI file 62-28331, author's possession. In 1920, special agent Charles Petrovitsky had advised Felix Frankfurter, a prominent critic of the 1920 deportation raids, that he would "be willing to assist in righting the wrongs made possible by the Department of Justice in the past four years. . . (and I) am anxious to put out of power the men who are undermining our system of government."

Frankfurter forwarded Petrovsky's letter to Albert DeSilver, ACLU national counsel, who wrote C.J. France of the Seattle branch of the ACLU that "I hope you can find time to get in touch with him for I think that the lead may carry the possibility of important development." Petrovitsky to Frankfurter, 8/16/20, 10/8/20; DeSilver to France, 10/20/20, vol. 118, ACLU Archives, Princeton, N.J. On June 14, 1933, Ray Tucker, a New York journalist, published a story in the New York World-Telegram which claimed that the BI, together with the Prohibition Bureau, were slated for abolition. Tucker alleged that the Bureau had "furnished material for ex-President Hoover's statement that the majority of last year's evicted bonus army were 'criminals or Communists.'" "It is this bureau," Tucker concluded, "which has been involved in hunting extremists, secret activities and other allegedly anti-American doings ever since the era of Harry Daugherty, William Burrs and Gaston Means." (emphasis added) The following day, Hoover prepared a lengthy rejoinder for the Attorney General. Claiming that "the facts" were at "considerable variance" with Tucker's allegations, Hoover first denied that the Bureau had investigated the Bonus Army. "This Bureau had nothing to do with the investigation of the so-called bonus marchers. . . (until) after the bonus army had left Washington, when the Veterans' Bureau submitted approximately 5,000 fingerprint records to be checked with the records in the (BI) Identification Bureau." Hoover also declared that the Bureau had not engaged in political surveillance activities "(s)ince 1924 when the Bureau was reorganized." "(T)here have been no such

tactics resorted to," Hoover repeated, and "Mr. Tucker's article is not only absolutely untrue in its statements, but in the impression which it conveys, as well as unfair in its meaning." Hoover to Gates, 6/15/33 Two months later, on August 11, 1933, Collier's Magazine published a second article by Tucker which claimed that "J. Edgar Hoover has made 'tailing' one of the most popular, though most unsocial, activities at the national capital." Tucker's was one of the few articles published after the 1924 reform that accused the FBI of illegal surveillance activities. Tucker undoubtedly found an FBI employee who had access to important FBI files and was willing to share them with Tucker. For example, Tucker correctly identified Harlan Fiske Stone, Thomas Walsh, William Borah, Felix Frankfurter, Zechariah Chafee, Jr, Frank P. Walsh and John L. Lewis as targets of earlier FBI political investigations. It is nearly impossible that Tucker could have known this without assistance from an insider. Hoover, of course, denied that FBI agents had ever shadowed Tucker or anyone else for that matter who was not suspected of violating a federal criminal statute. (Hoover to Early, 8/10/33) Several years later, when informed that Tucker had criticized the FBI at a meeting of the National Press Club, W.F. Glavin, an assistant to Clyde Tolson, told his source that Tucker was a "rental case." After reviewing the memo, Hoover noted that Tucker was "just a poor alcoholic!" (Glavin to Tolson, 9/7/38) All of the files Tucker alluded to are now open to researchers at the National Archives. See FBI Investigative Files, 1908-1922, National Archives, Washington, D.C.

41) Bayliss to Hoover, 9/5/28; FBI files, UMW, author's possession; Haas to Hoover, 9/5/28; Faqan to Tamm, 1/15/35, FBI files, TUEL, author's possession.

42) Bush to Attorney General, 8/21/29; Luhring to Hoover, 8/26/29; Hoover to Luhring, 8/26/29, FBI files, TUEL, author's possession; Hoover to Dodds, 12/19/31; FBI files, WESL, author's possession. In an October 1975 analysis of FBI jurisdiction over domestic security investigations, the Bureau cited one of Hoover's denials as evidence that the FBI "followed (Stone's) policy from its inception. On October 7, 1925, Hoover told Colonel James H. Reeves, General Staff, War Department, that 'general investigations into radical activities by our various field offices were discontinued some time ago by reason of certain changes in policy, program procedure, etc.'" Senate Select Committee to Study Governmental Operations with Respect to Intelligence Operations, Hearings, FBI, VI, 554.

43) Samuel Walker, Peculiar Justice: A History of American Criminal Justice (New York, 1980), 184-85; Enqar, FBI, 76-77; Arthur Millstaugh, Crime Control by the National Government (Washington, 1937), 48-53; See generally Irving Bernstein, The Lean Years. Roosevelt, it should be noted, had never been a supporter of the rights of dissidents. In 1920, while campaigning for the vice-presidency, he claimed that the 1919 takeover of the IWW headquarters by a mob led by members of the American Legion was "a form of red-blooded patriotism". Donner, Age of Surveillance, 54.

44) Senate Select Committee to Study Governmental Operations with Respect to Intelligence Operations, Hearings, FBI, VI, 559-60. Richard W. Steele, "Franklin D. Roosevelt and His Foreign Policy Critics," Political Science Quarterly, 94 (Spring 1979), 15-32.

45) Quoted in Bernstein, Turbulent Years, 309.

46) Bernstein, Turbulent Years, 310-312.

47) Hoover to Stephens, 9/14/34; Hoover to Cummings, 9/14/34; McKean to Hoover, 9/14/34, FBI files, UTW, author's possession. In Turbulent Years, Bernstein concludes that "the Communists had nothing to do with the strike. Communist headquarters in nearby New Bedford was shutdown and the party's 'flame', Ann Burlak, was driven out of Fall River." Turbulent Years, 312.

48) Hoover to Tamm, 12/5/34; Hoover to Early, 12/5/34. The report the FBI provided the White House was prepared by special agent C.G. Scherker in March 1931. See note 15, supra. Wilma Meredith memorandum, 12/5/34, quoted in Jerold Auerbach, Labor and Liberty: The LaFollette Committee and the New Deal (Indianapolis, 1966), 30; ACIU, Liberty and the New Deal: The Record for 1933-1934 (New York, 1934), 3; Jonathan Mitchell, "Civil Liberties Under Roosevelt", The New Republic (December 26, 1934), 188-189.



49) Derner, Age of Surveillance, 54, 56-59; Theoharis, Spying on Americans, 73-77.

50) See David Williams, "The Bureau of Investigation and Its Critics, 1919-1921: The Origins of Federal Political Surveillance," Journal of American History, forthcoming, December 1981. Theoharis, Spying on Americans, 40-64.

## Chapter VII

### Reform and Public Relations:

#### FBI Administrative Changes and Self-Promotion, 1920-1940

FBI director J. Edgar Hoover played an indispensable role in shaping not only the Bureau's investigative activities but its public image as well. Substantive organizational and administrative change was very well publicized. Hoover's orchestration of these changes help to explain why illegal surveillance activities went undetected between 1924 and 1934, and why President Roosevelt officially rescinded the Stone directive in 1936. More importantly, the reforms insulated the Bureau from public criticism and closer Congressional scrutiny, and insured that charges of abuse of authority would go uninvestigated. Since the 1930's, these reforms have received a great deal of scholarly and public attention. The various developments, from the founding of the FBI Crime Laboratory to the shaping of a more rigorous personnel policy and the creation of a publicity department, have been cited either to applaud the Director's accomplishments or to expose the roots of Hoover's later obsessions, particularly his manipulation of public opinion and his complete identification of self with the Bureau.[1]

FBI surveillance of non-criminal, political activities between the world wars has only recently come to light. Earlier historians downplayed the Bureau's virulent anti-radicalism and political conservatism during the period, and focused almost exclusively on the Bureau's well-known war on crime, especially manhunts involving notorious criminals such as John Dillinger and Alvin Karpis, which often related to the emergence of the FBI director as a popular hero during the Depression era. But given the Director's duplicity and contempt for Justice Department regulations and the FBI's assumption of broad new powers on the eve of the Second World War, a fresh look at the Hoover reforms and the Bureau's changing image during the Coolidge-Harding-Roosevelt administrations is necessary.[2]

There is little doubt that during the 1920's and into the 1930's the FBI underwent a fundamental transformation. From being a powerful but subsidiary bureau of investigation, it became the Federal Bureau of Investigation. The symbolic importance of this change was not lost on the director, his close associates, the Attorney General, or Congress. In 1924, the Bureau had been tainted by the Harding scandals and was a significant political liability for the new President, Calvin Coolidge. Twelve years later, the FBI director and his "G-Men" were folk heroes, the good guys, modern versions of frontier sheriffs who stood alone between order and chaos, justice and anarchy. In the early 1920's, the Bureau was still considered a political police, guarding the nation against communists, anarchists, and other radicals. By 1936, the Bureau had

thoroughly exorcised this image, claiming to be guided by neutral principles, free from any outside political interference, and concerned only with violations of the federal law. And when Hoover took office in 1924, he was a little-known, or unknown, bureaucrat; by the mid-thirties, Hoover was a public figure whose reputation as a fearless, gangbusting cop was unrivaled.[3]

For the purpose of this analysis, the reforms will be broken down into two distinct, though not unrelated, categories: the administrative (actual changes) and the cosmetic (symbolic changes). For example, had there been no tangible changes within the Bureau after he took office in 1924, Hoover would have had a more difficult time selling the FBI's image a decade later. Yet it would be a mistake to presume that Hoover reformed the the Bureau simply to create a favorable public image. Rather, the Hoover reforms were part of a broader process aimed at the professionalization of the Bureau begun in 1920 under the direction of the BI chief Frank Burke, and later endorsed by his successor, William Burns. Hence, they can not simply be seen in relation to the later Harding scandals and the resignations of Attorney General Harry Daugherty and BI chief Burns. But nothing stopped Hoover from taking credit for the administrative modernization of the Bureau, thereby enhancing his reputation at others' expense. And because the reforms were in keeping with Attorney General Stone's objectives, Hoover was able to win Stone's confidence and consolidate his own power within the Bureau. In addition, Hoover's commitment to "clean-up" the Bureau minimized Congressional or departmental suspicions that

the FBI would violate the prohibition of politically-motivated surveillance. Before examining changes initiated under Hoover's leadership, it is first necessary to describe the 1920 administrative reforms.[4]

During the summer of 1920, perhaps as a result of the adverse publicity following the deportation raids, BI Washington office chief Lewis Bailey assigned veteran Division Superintendents and Special-Agents-in-Charge such as R.B. Spencer, Frank Stone, Edward Brennan, and E.M. Blanford, to chair committees which would address the Bureau's pressing administrative and personnel problems. For the first time since its founding in 1908, explicit guidelines were to be drawn-up. Various categories were devised: field office administration and organization, internal communications and cooperation, local publicity and personnel selection, training and salaries. Up to this time, the Bureau had dealt with these issues on an ad hoc, almost informal, basis, reflecting perhaps a less structured and less demanding approach to federal law enforcement.[5]

In August 1920 the committee chairman met with other Bureau officials in Washington, D.C. Bureau rules and regulations, they agreed, should encourage economy, accountability, administrative regularity and limited decentralization. The Committee on Field Office Administration, for example, suggested that the responsibilities of the District Superintendents and SAC's should be outlined in greater detail. Uniform filing systems were to be established and personnel records standardized. The committee

agreed that the Bureau should redefine the functions of the field offices and their relationship to Washington headquarters and U.S. Attorneys. "Our present machinery creaks. Authority and responsibility are ill-defined," the committee noted, "There is no adequate interchange of ideas. Little utilization is made in our various offices of the experience that has been gained [there]." To remedy the problem, the committee recommended that the Bureau adopt a "divisional form of organization," which would help to insure field office competence and accountability. The report concluded with this stern warning: "The Bureau has drifted for years. . . But if it is our desire to set sail on a more ambitious voyage and reach port more creditably than is at all possible under present conditions structural changes are necessary - patches will not do." [6]

In another important area, the Bureau adopted a new set of guidelines for the use of informers, under-cover operatives, and "blue slips" (receipts for payments made to informers for information and on-going investigative services). The Committee on Informants had suggested that informers should only be hired after passing through a careful screening process. And since the Bureau had been criticized for using "agent provocateurs", the committee recommended that "(u)nder no circumstances should an informant be encouraged or permitted to initiate an act which in itself is unlawful." In addition, information supplied by informers should not be shared with any outside agencies, including private detective firms or other federal departments, unless such requests were authorized first by the District

Superintendent. And under no circumstances should the names of these persons be revealed to persons outside of the Bureau.[7]

The Committee on (Personnel) Selection, Training, and Salaries found that the Bureau should require applicants to have a high school diploma (or its equivalent) and at least some knowledge of the federal law. Those with formal legal training or accounting skills should be given preference in the selection process. The committee also reported that a training course be required of all new personnel and that the Bureau should adopt a standardized salary schedule to prevent political favors. Following the August meeting, the BI approved most of the committees' recommendations and sent copies of the various reports to all field offices. In 1921, for example, BI chief William Burns established the Bureau's first training school in New York City and required all new special agents to take the two-week course. The divisional form of organization was also adopted and the status of both the Divisional Superintendents and the Special-Agents-in-Charge were upgraded.[8]

In view of these significant changes in Bureau administration prior to May 1924, Hoover's early accomplishments were far less dramatic than has been presumed. Shortly after taking office, Hoover agreed to implement Storer's proposals for reorganizing the Bureau which the Attorney General outlined in a six point memorandum. As we have already seen, Hoover did not keep his agreement to ban on political surveillance, and the Bureau continued to investigate a wide range of lawful political

activities. Four of the six recommendations proposed changes in the Bureau's personnel policies and bear remarkable resemblance to the 1920 reform proposals. Stone, for example, asked FBI director Hoover that "(i)n making appointments, please nominate men of known good character and ability, giving preference to men who have had some legal training." But earlier that same year, FBI chief Burns had explained to a Congressional committee that the Bureau had established "a rule under which preference for appointments of special agents is given to men with legal training." Hence the importance of Stone's succession is less than convincing; still, Hoover was able to seize this opportunity to endear himself to the new Attorney General. Less than a week after receiving Stone's instructions, Hoover informed the Attorney General that "I have already commenced an examination of the personnel files of each of the employees of the Bureau and have already recommended a number of Special Agents (primarily Burns' cronies known as 'dollar-a-year men') whose services may be discontinued for the best interests of the service. . . Every effort will be made by the employees of the Bureau. . . to carry out to the letter your policies." [9]

If Hoover did indeed make any important administrative changes, he carefully followed the recommendations adopted by BI chief Bailey four years earlier. This, however, did not prevent Hoover from rewriting history. In his official account of the FBI, Don Whitehead writes:

One of Hoover's first moves was to give the special agents in charge at the field offices greater authority over special agents assigned to them. The old system in which the agents



sent individual administrative reports directly to Washington was discontinued. The agents reported to the special agent in charge and he made his reports to Washington. Thus a chain of command was established which had not existed before. Agents were reclassified on a basis of efficiency, and Hoover saw to it that the best men received the highest pay. Authority was strengthened. . . A field inspection was established in which inspectors visited each field office and checked on the agents' efficiency, character, and industry. Office routine was systematized and standardized so that agents going from one office to another would find precisely the same methods and rules of operations. Agents were expected to put in an honest day's work - and not to close shop in midafternoon as many had been doing.

Compare these assertions with the conclusions of the 1920 Committee on the Reorganization of the Field:

The individual agent will report all investigative matters to the Agent-in-Charge of the office to which he is attached. . . All the administrative business of the individual Agent with the Washington office or with the Division Superintendent will be conducted by the Special Agent-in-Charge. . . In general, the individual Agent will cease to have written relations with Washington and there will be a great reduction of the number of individuals with whom the Washington office will deal. . . The more liaison we have between the Washington office and our individual men in the field, the greater will be our success. And the Division Superintendent, as the immediate representative of the Director, must be the author of such liaison.[11]

That these two passages are quite similar suggests that the impact of the Stone-Hoover reforms have been consistently overstated. The FBI had already undergone significant changes by the time Hoover had taken office in 1924, even though these reforms have been overshadowed by the Harding-Daugherty-Burns scandals. But unlike his predecessor, Hoover was a skilled bureaucrat who was keenly aware of the need to shape-up the

Bureau and to restore its tarnished image. Realizing this, and the need for the Bureau to set a new agenda, Hoover soon learned to beat the police reform drum often and loudly.[12]

The historian Samuel Walker has labeled the 1920's the "era of the crime commission." Beginning in 1919 with the Chicago Crime Commission's study of that city's criminal justice system, important surveys were conducted in Cleveland (1922), Missouri (1926), and Illinois (1929). Although each commission studied different aspects of crime and society's response to it, each report generally concluded that "the practice of the criminal profession is not unduly hazardous," for the risk of punishment seemed very low." In 1929, following the lead of state and local governments, President Herbert Hoover commissioned former Attorney General George Wickersham to chair a nationwide study of law enforcement. Two years later, the National Commission on Law Observance and Enforcement issued a fourteen volume report, only one of which attracted substantial public attention. Written in large part by Zechariah Chafee, Jr. of the Harvard Law School, volume 11, entitled Lawlessness in Law Enforcement, outlined in considerable detail police abuse of the constitutional rights of the accused. Special attention was paid to the use of the third degree by state and local police. "Physical brutality," the commission found, "was 'extensively practiced' in the police departments across the country." Suspects, for example, had been suspended "by their ankles out of second story windows and subjected. . .to beatings and even sexual indignities in an effort to extract confessions." The commission's revelations

heightened the public's awareness of police misconduct, giving "a strong boost to police professionalization." "Reform-minded police chiefs" Walker writes, "could now rely on a reservoir of public support for their efforts to improve their departments." [13]

Having already earned his reputation as a reformer in Washington, Hoover's position to assume national leadership of the police reform movement could not have been more propitious. The Wickersham Commission had been favorably impressed by the Bureau and, therefore, Bureau operations were not the subject of serious or sustained criticism. [14] The commission did, however, question the accuracy of the Uniform Crime Reports (UCR) system, a program the Bureau had administered since 1930. For almost a half a century, criminologists had argued that a clearinghouse for national crime statistics was necessary "to measure the effectiveness of both law enforcement and correctional programs." In the late 1920's, with help from the Rockefeller Foundation, the EI, various professional organizations, the International Association of Chiefs of Police conducted a comprehensive study of the need for such a program. In 1930, the EI was selected to compile the UCR and distribute the results to various state, local and private agencies, suggesting at least that the Bureau was considered the leading law enforcement agency in the country. The Wickersham Commission criticized the UCR for two reasons. First, the methodology used by the Bureau to analyze the statistical data was seriously flawed. The Bureau did not, for example, address the question of unreported crime, and since the

UCR were based on seven "crime indexes," the UCR "presented a distorted picture of criminal activity." Thus, "'misleading information' was likely to be sent out 'under official auspices and with the imprimatur of the Government.'" More importantly, the Commission feared that the BI would be tempted to misuse the UCR: "A serious abuse exists in compiling them as a basis for requesting appropriations or for justifying the existence of or urging expanded powers and equipment for the agency in question rather than for the purposes which criminal statistics are designed to further." Although the Commission's critique did not lead to any significant changes in the UCR, the Bureau did add this disclaimer to the various UCR publications after 1931: "[T]he FBI does not vouch (for the statistics') accuracy." [15]

By the mid-thirties, the Commission's worst fears had been realized. FBI director used the statistics to lend credence to the erroneous claim that the Bureau had a 98% conviction rate, the highest of any federal law enforcement agency. Hoover also quoted statistical information while on the lecture circuit to stir up support for the FBI's war on crime and corruption. In 1936, for example, the director decried the "armed forces of crime" which at different times numbered somewhere between 3,000,000 and 4,500,00 active participants. In April 1936, Hoover asserted that "there are today in America 150,000 murderers roaring at large," even though the UCR reported that in "987 cities with a total population of 35,450,666, the police were cognizant of only 3,582 cases of criminal homicide." [16]

The FBI director's claims, however, were buttressed by public fear of a few desperate criminals whose exploits had received nationwide publicity. Responding to criticism that law enforcement agencies were unable to control violent crime, Attorney General Homer Cummings initiated a drive to increase the federal government's criminal justice responsibilities. "[Cummings'] law enforcement policy", Richard G. Powers writes, "was designed to involve all citizens in a national crusade that would give them a sense of the law's validity and strength." The Attorney General's first objective was to secure Congressional approval of his legislative proposals which would expand the federal criminal code. In May 1934, after the FBI had successfully tracked down, and in some cases killed, notorious criminals such as John Dillinger, Alvin Karpis, and Machine Gun Kelly, Congress approved a bill giving the federal government jurisdiction in cases where a suspect had crossed state lines to avoid prosecution. A month later, Congress passed additional laws which made interstate racketeering a federal crime and required the registration of machine guns and sawed-off shotguns, popular weapons used in the gangland battles of the 1930's. These new laws, Arthur Millsbaugh noted, clearly evidenced "that the federal government (had) assumed large and increased responsibilities in the field of general law enforcement." [17]

Attorney General Cummings then moved quickly to establish the Justice Department's leadership in the national crusade against crime. For that purpose, Cummings convened the Attorney General's Conference on Crime in Washington in December 1934.

During the conference, which was attended by more than 600 state and local law enforcement officials, Cummings suggested that in those areas still outside his department's jurisdiction, the FBI would lend state and local agencies technical support and expert advice. The Bureau, for example, would examine fingerprints sent by local officials and compare these prints with those on file in its Washington collection. In 1935, when the FBI opened its Crime Laboratory, these forensic services were greatly expanded. Any important evidence could be given to the FBI for careful, scientific examination by specially trained Bureau employees.[18]

In a similar development, the FBI established a national police academy in July 1935. In his address to the Attorney General's Crime Conference, Hoover had told his audience that "[t]he value of adequate training has already been proven in the training schools maintained by our Bureau for its personnel. . . . With but slight readjustment of operations, these training facilities already established could be extended to the local law enforcement agencies of the country." Understandably, the Bureau's goal was not simply to improve and professionalize local police services but also to establish important ties with these agencies. The Bureau would then be in a unique position in the law enforcement field; for answers to perplexing evidential and other technical problems, police officials could appeal to the FBI for assistance; for statistical information on crime in America, police and criminologists would look to the UCR; and for training and personnel development, local police departments would send their most talented officers to the Bureau's National

Police Academy. Thus, by early 1936, the Bureau had achieved preeminence in the law enforcement field and was the best-known and most respected agency in the country.[19]

Yet the Bureau did not reach these lofty heights without considerable outside assistance. Had it not been for a helping hand from Hollywood in the form of "G-Men" movies, it is unlikely that the Bureau's rise to the top would have been as precipitous. However, as Richard Powers has demonstrated, the Justice Department and the FBI did not, at first, associate themselves from the production and promotion of these films. The Warner Brothers movie, "G-Men" was the first of a series of films which glamorized the FBI's accomplishments. Starring James Cagney as Erick Davis, the consummate good-guy who happened to be an FBI agent, "G-Men" dramatized the Bureau's battle with gangsterdom in the early 1930's. It referred at various times to the capture of Machine Gun Kelly, Pretty Boy Floyd, and Bruno Hauptmann, kidnapper of the Lindbergh baby. The producers of the movie also recreated the shooting of John Dillinger at a Chicago theater even though the major studios had agreed not to allude to the incident at all.[20]

Attorney General Cummings was particularly distressed by the failure of the producers of "G-Men" to give him any credit for these achievements. Instead, the movie suggested that the FBI director (a Bruce J. Gregory) was personally responsible for the government's victory over gangsterdom. "Not only had Warner Brothers rewritten history," Powers writes, "but the studio had

engineered a departmental coup d'etat." Soon thereafter, FBI director Hoover stole the limelight and became the object of public adulation.[21]

Immediately after the movie was released, Hoover maintained a low profile. If for no other reason than self-preservation, the FBI director repeatedly denied that the Bureau had either assisted in the production or the promotion of "G-Men". Nevertheless, Hoover slowly began to encourage sympathetic journalists and other writers to publish glowing accounts of Bureau's anti-crime activities. In some cases, the FBI assisted writers directly, copying files for their use in preparing their reports.[22] As a result of these efforts, an entire new genre of literature promoting the Bureau sprung up almost overnight. In addition to the stories found in increasing numbers in pulp magazines and novels, more scholarly books on the Bureau were published on the eve of the Second World War, testifying to the increasing popularity of the FBI in the late 1930's. Despite claims to the contrary, these books generally glorified the Bureau, even to the point of genuflecting at the very mention of Hoover's name. For example, in Men Against Crime, Henry Lysing writes: "The work of John Edgar Hoover and the FBI is a shining example of what can be done in the battle against crime. No other organization of crime-fighters in the world has the color, the glamour, and the relentless spirit of this compact group of hard-working, unflinching young Americans, led by a man who is so typically American." Similarly, in G-Men at Work: The Story of America's Fight Against Crime and Corruption, Dick C'Conner



suggests that Hoover is endowed with almost super-human powers: "From one end of the vast American continent to the other J. Edgar Hoover - a lone crusader - is preaching the gospel of law enforcement. Apart from his official duties I can hardly understand where he finds the time to carry on his campaign. But then Hoover is no ordinary man. . . His associates who idolize him. . . wonder if he ever sleeps." [23]

Beginning in 1934, Hoover supplemented the steady diet of journalistic paeans with his own articles and reviews which appeared in publications such as Reader's Digest, Parade, Scholastic, American Magazine, Rotarian, Collier's, and Scientific American. Hoover's success as an author was truly remarkable. As Frank Donner has observed: "(No) single contributor, however lustrous, published in an array of periodicals remotely comparable in number and diversity. Hoover stands alone in the number of his articles, speeches and interviews that have been reprinted by both the government and private groups, as well as his output of officially sponsored pamphlets." The subjects of his early articles, and the many speeches he delivered to practically every conceivable patriotic and civic organization, focused primarily on the crime problem and his proposed solutions to it. Hoover did not attack communists, socialists, radicals, "pseudo-liberals and intellectuals" and other similar anti-American bugaboos until President Roosevelt announced, in September 1939, that the Bureau had taken on new internal security responsibilities. As with his anti-radicalism, the Director's articles and speeches reflected

the urge to find a simple answer to a complex problem. In rejecting contemporary sociological and criminological theories about the causes of crime, Hoover inevitably pinned the blame on convenient scapegoats, the "shyster lawyer and other legal vermin", "criminal jackals", "gutter scum", "swivelchair criminologists, professional panderers, convict lovers and fiddle-faced reformers" and the ever present "sob-sisters".

Yet Hoover's unsophisticated critique attracted a nationwide following. The FBI director soon became the most popular and sought-after conventioneer speaker. Averaging at least one major address a month, in 1936 alone, Hoover spoke to the New York Herald Tribune Round Table Forum, the Hi-Y Clubs of America, the Holy Name Societies, the Chicago Boys' Clubs, the International Association of Police Chiefs, the International Association for Identification and the Daughters of the American Revolution.[25]

By the mid-1930's, the Bureau opened still another line of communication, linking Hoover directly with a national constituency. In an effort to insure widespread publicity and to ingratiate himself to the country's newspaper editors, Hoover had copies of his speeches mailed to hundreds of daily and weekly publications, together with a "personal" message from the director thanking the recipient for his/her support of the Bureau's anti-crime efforts. Although several editors later complained that the Director had used general tax funds for self-promotion, most newspapermen were flattered to be on the FBI'S mailing list and found no grounds for concern. In fact,

many of them had received other letters from the Director personally commending the newspaper for publishing favorable stories about the Bureau. Few would have agreed with the conclusion reached by Arthur Millsbaugh, a Brookings Institution staff member who had supervised a comprehensive study of federal law enforcement agencies and policies:

By advertising the activities of a federal agency until it becomes a symbol of efficiency in general criminal law enforcement, we may be repeating the follies of the Eighteenth Amendment; and perhaps this time we shall not come so quickly to an acute realization of our error. . . It is quite possible that (Hoover's) preventive activities might be incompatible with the primary functions of the Bureau (i.e., investigation, detection, apprehension, and identification, co-ordination of the operations of the operations of state and local police forces, research and training in police techniques, and the rendering of services, within the scope of these functions, to other agencies, federal, state, and local). "[26]

For the most part, throughout the 1920's and into the 1930's, Congress was similarly starstruck. Many Congressmen understood that enthusiastic support of Hoover's FBI and its tough anti-crime rhetoric was good politics. Few risked a public confrontation with the Director, and usually, those who did, were seasoned veterans who came from relatively safe districts. In one such incident, Senator Kenneth McKellar, who was first elected to the Senate in 1916, tried to determine to what extent the FBI had investigated a Tennessee judge who had been accused of misconduct on the bench. After the Justice Department had reached a compromise with the Senator over these files, McKellar told his colleagues that "I have my doubts about secret service

systems in a republican form of government like ours. I have been astounded at the tremendous growth and the use of large sums of money for the (FBI)." Two years later, after the release of the movie "G-Men" and suspecting that Hoover had assisted in its production, McKeller asked the FBI director if the Bureau had spent "any money directly or indirectly (on the promotion of "G-Men")." Hoover categorically and, by all accounts truthfully, denied any FBI involvement in the production of "G-Men" or any other film about the FBI. The Justice Department and the FBI, Hoover testified, had "declined emphatically to lend any form of endorsement (of the films) and had nothing to do with their production; furnished no technical advice, or other advice as to the production of those pictures." [27]

Hoover was less than forthright when asked whether the FBI had assisted journalists. As seen earlier, the Bureau had carefully cultivated writers and, on occasion, opened Bureau files for their use. When queried, however, about these activities, Hoover replied:

There are many magazines that are particularly objectionable (to the FBI). The Attorney General upon a few occasions, a very few, has permitted a writer to come in and make a study of the Department, including our Bureau and other branches of the Department and write stories. There have been, I think, no more than three or four cases of that kind. [28]

No one in Congress raised the issue of using federal funds to distribute copies of the Director's speeches until 1940 and then only tangentially. As a consequence, this possible violation of the spirit, if not the letter, of the appropriations laws was

never satisfactorially resolved.

Unlike McKeller, and later, George Norris, most congressmen preferred to cultivate the Director's goodwill. One popular way of currying the Director's favor was to have his speeches and articles reprinted in the Congressional Record. Between 1935 and 1940, 14 congressmen had 25 of the Director's speeches entered into the Record at taxpayers' expense. Several were even considered important enough to be reprinted twice in the same volume. On several occasions, after the Director or the FBI had been the object of public criticism, congressmen took the floor to defend the Bureau's record and praise the Director's achievements. In the years after 1934, the Congressional appropriations committees raised few objections to the Bureau's ever increasing budget requests. Committee members understood that toeing the Bureau's hard-line against crime was not only good public relations, but also good politics.[29]

In little over a decade, FBI director Hoover had accomplished a public relations, departmental, and constitutional coup. But unlike the enormous increase in the Bureau's popularity and public visibility, Hoover's consolidation of bureaucratic power was more subtle and, essentially, went unnoticed outside of the Justice Department. His celebrity status, for example, did not insure his ascendancy within the department no matter how many "G-Men" movies were made; officially, the FBI director was still the Attorney General's subordinate. Nevertheless, his public stature did place real

limits on the Attorney General's authority over Bureau affairs, and after 1934, few attorneys general dared to disagree publicly with Hoover, the nation's "top cop".[30]

Similarly, in view of the FBI's successes, Congress had all but abdicated its authority to oversee Bureau operations. The Bureau's independence was, at least theoretically, restrained by the budgetary process, as were other federal agencies. But after the Stone reforms neither the House nor the Senate made any serious effort to insure that the FBI would not overreach its investigative mandate as it had during the Red Scare and the Harding Administration. Thus, Congress never learned the the FBI had continued to conduct politically-motivated, non-criminal investigations either on its own, or the President's, initiative until 1939. This is not to say that many congressmen would not have sanctioned these investigations had they come to light, but in 1930, when Representative Hamilton Fish called for renewed general intelligence investigations, his proposal failed to attract any appreciable public or congressional support. In the absence of Congressional oversight, then, the FBI director was free, within certain limits, i.e., the FBI could not disrupt radical activities, to investigate political activities without either legislative or executive authority. In this sense, Congress made it that much easier for Hoover to betray his 1924 pledge to Attorney General Stone.

Like Congress, President Roosevelt was thoroughly impressed by the FBI's achievements in the criminal justice field. There also seems to be little doubt that the President was equally pleased by the fact that the FBI scored its most important successes during his first term in office. Attorney General Cummings and others used the Bureau's achievements to allay liberal and radical criticism that the government had failed to find adequate solutions to other pressing social problems, most notably economic distress and displacement brought on by the Great Depression. Since Hoover was both a popular hero and the good soldier who had earned the President's respect and confidence, he occupied a special place within the Roosevelt administration. Hoover's image as reformer and crime buster served not only to shield him from Congressional control and public criticism but also enabled him to consolidate independent power within the executive branch. Not surprisingly, Roosevelt appreciated Hoover's unique position; in fact, he encouraged the Bureau's growing independence from the Attorney General and the Justice Department and tried to make the most of the situation. Given its freedom from typical bureaucratic restraints and accountability and Hoover's enthusiasm to re-enter officially the intelligence field, the FBI was the perfect choice to conduct secret political surveillance at the President's behest. In August 1936, when he decided that a comprehensive investigation of "subversive activities" was again necessary, Roosevelt was supremely confident that the FBI could be trusted to keep his request and the investigations confidential and in his own

ability to keep the FBI director in line. The history of FBI political surveillance on the eve of the Second World War shows that while Roosevelt was right on the first count, he seriously overestimated his own ability to control Hoover and the FBI.



## NOTES

1) See especially, Arthur Millsbaugh, Crime Control by the Federal Government (Washington, D.C., 1937); Homer Cummings and Carl McFarland, Federal Justice: Chapters in the History of Justice and the Federal Executive (New York, 1937); Max Lowenthal, The Federal Bureau of Investigation (New York, 1950); Don Whitehead, The FBI Story: A Report to the American People (New York, 1956); Fred J. Cook, The FBI Nobody Knows (London, 1964); Sanford Ungar, The FBI: An Uncensored Look Behind the Walls (Boston, 1976); Frank J. Donner, The Age of Surveillance (New York, 1980).

2) Since 1976, it has been known that FBI director Hoover had deliberately misled Presidents and Attorneys General during the Cold War about FBI programs such as CCINTELFBC and the custodial detention index. But the extent of his insubordination prior to the Second World War has never been fully examined. The fact that he subverted Justice Department policies during the "reform" period (1924-1936) should shed new light on the Director's ability to manipulate, obstruct and dissemble. See chapter VI, infra; Donner, Age of Surveillance, 79-125.

3) See Whitehead, FBI Story, 65-156; Cock, The FBI Nobody Knows, 146-234.

4) In his critical analysis of the FBI, Max Lowenthal suggested that Hoover's so-called reforms may not have been all they were cracked up to be, but without the necessary documentation, he was unable to pursue the issue. See Lowenthal, FBI; The reports of the August 1920 conference can all be found in BI file CG 390982, Bureau of Investigation Investigative Files, 1908-1922, National Archives, Washington, D.C. Although William Corsen, in his book The Armies of Ignorance: The Rise of the American Intelligence Empire (New York, 1977), hints that Hoover may have threatened Attorney General Stone when the latter took office in order to continue FBI political surveillance activities, this scenario is almost certainly unlikely. Corsen offers no proof other than some unconfirmed rumors that had been circulating among former U.S. intelligence officers. Not only was Hoover in no position to threaten Stone with disclosures that would ruin some Republican politicians, as Corsen suggests, but Stone, who was armed with an explicit Presidential mandate to clean-up the Justice Department, would not have suffered such indignities and insubordination from a junior department official. Instead, Hoover simply kept the lid on the illegal surveillance of non-criminal activities, thereby avoiding any unpleasant, and, in terms of his career in the Justice Department, probably fatal, confrontation with the new Attorney General.

5) The reports filed by the various committees do not specify exactly why BI chief Bailey ordered the committee to study the administrative problems in the summer of 1920. It is quite likely, however, that Bureau officials were less than satisfied with the Bureau's anti-radical and criminal investigations, especially after the deportations debacle. It is interesting to note that GID chief Hoover had nothing at all to do with the study or the committee recommendations. There were nine committees in all: Communications, Co-Operation, Field Office Administration, Field Organization, Informants, Local Publicity, Manual of Instructions, Reports, Personnel Selection.

6) Report of the Committee on Field Office Administration (Special Agents Pierce, Blanford, and Spencer), BI file OG 390982.

7) Report of the Committee on Informants, Undercover Men and Blue Slips (Special Agents Spencer, Stone, and Tighe), BI file OG 390982.

8) Report of the Committee on Selection, Training, and Salaries (Special Agents Brennan, Weakley, and Martin), BI file OG 390982; Lowenthal, FBI, 307-315.

9) Alpheus D. Mason, Harlan Fiske Stone: Pillar of the Law (New York, 1956), 151; Lowenthal, FBI, 311; Whitehead, The FBI Story, 68-69.

10) Whitehead, FBI Story, 69.

11) Report of the Committee on the Reorganization of the Field (BI chief Bailey, Special Agents Brennan, Eraniman, Bryon, Pendleton), FI file CG 390982.

12) Whitehead, FBI Story, 92-112, 129-155; Cook, The FBI Nobody Knows, 146-166; Ungar, FBI, 48-55.

13) Samuel Walker, Popular Justice: A History of the American Criminal Justice System (New York, 1980), 169-180; National Commission on Law Observance and Enforcement, Lawlessness in Law Enforcement (Washington, 1931).

14) During the Commission's investigation of the FBI, several Chicago newspapers reported that the offices of the Chicago chapter of the Trade Union Unity League had been raided by the local red squad in co-operation with agents from the FBI. In early March 1930, the Commission's secretary, Max Lowenthal, questioned FBI director Hoover about the allegations and whether these activities, if confirmed, had violated Attorney General Stone's order prohibiting politically-motivated investigations. FBI director Hoover then ordered SAC E.J. Connelley of the Chicago field office to prepare a complete report on the incident. Connelley denied any Bureau involvement in the raid and the subsequent arrests, and on March 5, 1930, Hoover told Lowenthal that "there was no foundation for any of these stories in so far as the activities of the Agents of this Bureau were concerned." Hoover to Lowenthal, 3/5/30, Records of the National

Commission on Law Observance and Enforcement, Record Group 10, National Archives, Washington, D.C. The director's story is probably true, although there is no way for knowing for sure since he feared that any adverse publicity would ruin the Bureau's credibility and undermine his secret surveillance program. Chicago Tribune, 2/28/30; Chicago Daily-News, 2/28/30; Chicago Daily-Times, 2/28/30. Chicago Evening Post, 2/28/30. Chicago Herald and Examiner, 2/27/30, 2/28/30. See chapter VI, *infra*; also see, Whitehead, FBI Story, 90.

15) Walker, Popular Justice, 186-89; Lowenthal, FBI, 395.

16) Millsbaugh, Crime Control by the Federal Government, 272-273; Max Lowenthal, "The Regrettable Dependence of the Attorney General on FBI Statistics," box 107, George Norris papers, Library of Congress, Washington, D.C.

17) Richard G. Powers, "The Attorney General and the G-Man: Hollywood's Role in Hoover's Rise to Power," 62 Southwest Review (Autumn 1977), 330;

18) Millsbaugh, Crime Control by the Federal Government, 53. Powers, "The Attorney General and the G-Man", 344; "J. Edgar Hoover and the Detective Hero," Journal of Popular Culture 9 (Fall 1975), 272-75; Whitehead, FBI Story, 129-49.

19) Whitehead, FBI Story, 149-55.

20) Powers, "The Attorney General and the G-Man," 329-46.

21) Powers, "The Attorney General and the G-Man," 341.

22) FBI director Hoover was not the first Bureau official to assist journalists write favorable stories about the Bureau. On February 2, 1927, former BI agent Franklin Dodge informed Senator Thomas Walsh that SAC Edward Brennan of Chicago had asked him to co-operate with a reporter from the Saturday Evening Post. Specifically, Brennan wanted Dodge to provide any derogatory information about labor union activities in the Grand Rapids, Michigan area, to the Post reporter. The matter, Brennan reminded Dodge, was to remain strictly confidential. Dodge also told Senator Walsh that the Bureau's Washington headquarters had given a reporter from the Boston Transcript who was writing a series about "Reds in America" "a room and desk space in Mr. Hoover's office (in 1921) in the Dept. of Justice building and for months the Dept. of Justice files were turned over (to the reporter) with no one else in the room." Dodge to Walsh, February 2, 1926, box 278, Thomas Walsh papers, Library of Congress, Washington, D.C.

23) Powers, "J. Edgar Hoover and the Detective Hero," 272-75; Henry Lysing, Men Against Crime (New York, 1938), vii-viii; Dick O'Connor, G-Men at Work: The Story of America's Fight Against Crime and Corruption (London, 1939), 20; Tracy and Leon Tarrow, How to be a G-Man (New York, 1939); Melvin Purvis, American Agent (New York, 1936). See also Guide to Periodical Literature, 1932-1941. It is highly questionable whether Hoover

authored all of the articles that he is credited with. His most famous work, Masters of Deceit (New York, 1958), was entirely ghost-written by Bureau agents who later received a bonus-reward of \$250.00 apiece for their efforts. However, despite claims to the contrary, kept the rest of the royalties. See Donner, Age of Surveillance, 95.

24) Donner, Age of Surveillance, 467-68.

25) See Millsbaugh, Crime Control by the Federal Government, 271. Copies of many of Hoover's speeches can be found at the Library of Congress, general collections.

26) Millsbaugh, Crime Control by the Federal Government, 296-98; Throop to Norris, April 26, 1940; Locke to Norris, May 6, 1940, box 106, George Norris Papers, Library of Congress, Washington, D.C.

27) Lowenthal, FBI, 333-34.

28) Lowenthal, FBI, 392-93.

29) See the index to the Congressional Record, 1936-1940. The Bureau's best Congressional patron during this period was Representative Joseph J. O'Brien of New York. O'Brien had eight of Hoover's speeches and articles reprinted in 1939 and 1940.

30) See, for example, the statement and testimony of former Attorney General Nicholas deB. Katzenbach, Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Hearings, VI, FBI, 94th Cong., 1st Sess.

(1975) , 198-216.



## Chapter VIII

### Prelude to War:

#### FDR, Congress, and FBI Internal Security Operations, 1936-1941

In August 1936, President Franklin Roosevelt, responding to the growing threat of fascism, secretly rescinded Attorney General Stone's 1924 order restricting FBI investigations to possible violations of federal laws. He also lifted the Justice Department's prohibition of warrantless wiretapping. As a result of this directive, the FBI's intelligence operations were effectively insulated from meaningful executive and legislative oversight. By 1940, FBI director Hoover had re-introduced surveillance of practically every major political and labor organization in the United States and had unilaterally established a custodial detention program.

Although the 1936 directive was actually limited in scope, the Bureau used this order from 1936 through 1976 to justify its counterintelligence operations. Don Whitehead later summarized its significance: "(The directive made the FBI) not only a crime fighting organization, but also an intelligence agency. . . . In contrast to intelligence work of the past, President Roosevelt

made the FBI'S responsibility a continuing one, involving a broad new front." [1]

Congress also played a role in this process. Following the conservative triumph in the 1938 election Congress reasserted its authority against the liberal proposals of the administration. Yet it failed to exercise its legislative authority in intelligence matters in any meaningful way. For example, in 1939, Roosevelt made public his decision to grant the FBI important new internal security responsibilities. This action was questioned but never seriously challenged. In early 1940, several important congressmen, including George Norris and Burton K. Wheeler, criticized the President's decision to re-establish the FBI'S General Intelligence Division and proposed a thorough Congressional investigation of the Bureau's intelligence work. But, Congress deferred to the executive as it had in the past, and cancelled an inquiry into FBI wiretapping and ignored Norris' proposal.

These issues require a closer analysis. Thus, this chapter will review Roosevelt's decision to rescind the Justice Department's prohibition on non-criminal, politically-motivated investigations, and wiretapping. We shall also examine the implementation of the custodial detention program, and the Congressional response to these executive initiatives. [2]

We begin by recalling that the FBI conducted political intelligence investigations after 1924 both on its own and on the White House's initiative. But the Bureau lacked a clear

legislative or executive mandate to collect and analyze general intelligence information. Hoover was acutely aware of this jurisdictional dilemma. As a consequence, FBI political investigations between 1924 and 1936 were secretly conducted and few people outside of the Bureau were aware that the FBI was collecting intelligence information. Moreover, the Bureau could do little with the intelligence information that it had gathered in violation of Stone's order. Communists and other leftists could not be prosecuted under existing laws prohibiting seditious conspiracy, and while alien radicals could still be deported, the Bureau rarely intervened in these proceedings after 1924. Even though Hoover advised the Fish Committee in 1930 that Congress should approve a peacetime sedition law, he did not actively lobby for its approval; his advocacy would have openly violated Stone's order prohibiting his activities and would have left the FBI director open to criticism, something Hoover invariably avoided.[3]

Roosevelt shared some of these inhibitions. Soon after assuming office he began to use the FBI as an in-house detective agency. Yet the President was reluctant to use the Bureau to suppress his political opponents on the right and the left. Like Hoover, Roosevelt feared that if he publicly authorized the FBI to conduct non-criminal investigations, he could touch off an unnecessary and damaging controversy. At first there was good reason not to publicize politically motivated investigations.[4]

In 1936, however, when Roosevelt determined that foreign policy crises required more comprehensive general intelligence investigations, he called Hoover to a private meeting and asked the FBI director to gather the desired information. The President had legitimate ground for concern. In January 1936 Secretary of War George Dern advised Attorney General Homer Cummings that "there was 'definite indication' of foreign espionage in the United States and that in an emergency 'some organizations. . . would probably attempt to cripple our war effort through sabotage.'" Dern recommended that the Justice Department establish a "counterespionage service among civilians to prevent foreign espionage in the United States and to collect information so that in case of an emergency any persons intending to cripple our war effort by means of espionage or sabotage may be taken into custody." Also Roosevelt was aware that Gerald MacGuire, a New York attorney who represented the American Liberty League, had tried unsuccessfully to persuade Smedley D. Butler, a former Marine Corps commandant, to lead an anti-New Deal coup d'etat. [5]

On August 24, Roosevelt and FBI director Hoover met alone at the White House to discuss these and other potential threats to the nation's internal security. Hoover's own memorandum describing the discussion is the only record of the meeting currently available. Although Hoover refers to the President's intention to prepare a similar summary and place it in the White House safe, such a document has not been found. Hence, we are forced to rely on Hoover's interpretation of the executive order,

and, as a result, "the scope of the program Roosevelt had authorized. . . cannot be definitely determined." According to the memo, Hoover apprised the President of the right-wing intrigues. But his briefing focused primarily on the activities of domestic communists, activities the Bureau had been watching since 1919. Hoover informed Roosevelt that Harry Bridges's West Coast Longshoremen's Union "was practically controlled by the Communists". The communists also "had very definite plans" to seize control of the United Mine Workers and had considerable influence in the Newspaper Guild. The FBI director's memo continued:

I told him that my information was that the Communists had planned to get control of these three groups and by doing so they would be able to paralyze the country in that they stop all shipping in and out through the Bridges organization; stop the operation of industry through the Mining Union of Lewis; and stop publication of any newspapers of the country through the newspaper guild. I also related to him the activities which have recently occurred with Governmental service inspired by Communists, particularly in some of the Departments and in the National Labor Relations Board.[6]

Apparently disturbed by Hoover's appraisal of the Communist threat, Roosevelt asked the FBI director to investigate systematically "subversive activities in the United States." Further, the President requested a "broad picture of the general movement and its activities as may affect the economic and political life of the country as a whole." Although the FBI had never suspended its surveillance of radical activities, Hoover told the President that presently "no governmental organization"

collected "general intelligence information", and that because membership in the Communist Party was not illegal, the FBI had "no specific authority to make such investigations." When Roosevelt asked if Hoover had any suggestions, the Director told him about the amendment to the 1916 Appropriations act which allowed the Secretary of State to authorize FBI investigations. The statute was broad enough, Hoover claimed, to justify general investigations of legal political activities. Finding the idea appealing since the investigations could be "handled quite confidentially", Roosevelt agreed to arrange a meeting with Secretary of State Cordell Hull for the following day in order to secure Hull's approval of the plan.[7]

At this meeting, Roosevelt explained to Hull that domestic communist and fascist activities were "international in scope and that Communism particularly was directed from Moscow." A Soviet counsel to the United States, Constantine Goumansky, Roosevelt asserted, was deeply involved in these activities, "so consequently it was a matter which fell within the scope of foreign affairs over which the State Department would have a right to request an inquiry to be made." Roosevelt informed Hull of his "desire" for an investigation of these allegations and that "this survey could be made by the (FBI) if the Secretary of State requested the (Justice) Department to conduct an inquiry under the FBI Appropriations Act." When Hull agreed with the President's proposal, Roosevelt instructed Hoover to notify Attorney General Cummings of the decision.[8]

While Roosevelt may not have intended the August 1936 directive to authorize on-going surveillance of dissident political activities, the order gave Hoover the express Presidential approval which the Bureau had previously lacked. These investigations, which had been limited since 1924 for security reasons, were quickly broadened following the August 25 meeting. On August 28, assistant FBI director E.A. Tamm advised Hoover that the Bureau had begun to develop "a systematic organization of intelligence information 'concerning subversive activities.'" Bureau surveillance would follow the basic pattern it had assumed in 1919-1920, and would focus on the activities of labor organizers, university professors, journalists, and radical political leaders and members of the Communist and other leftist organizations. The Bureau would step up efforts to recruit informers and would "index the material previously submitted." That is, the FBI would organize information collected in violation of Stone's 1924 order. Summaries of all investigative reports on "major developments in this field", Tamm indicated, would be prepared and submitted to the Director daily.[9]

The intelligence gathering campaign soon picked up momentum. On September 5, Hoover instructed all field offices "to obtain from all possible sources information concerning subversive activities being conducted in the United States by Communists, Fascists, representatives or advocates of other organizations or groups advocating the overthrow or replacement of the Government by illegal means." True to the Bureau's record in such matters, the investigations that followed Roosevelt's request were

primarily political and would embrace many activities that could not, by any stretch of the imagination, be considered "subversive" or "illegal".[ 10 ]

If Roosevelt did not envision as broad an inquiry as the one developed by FBI director Hoover, he and the Attorney General did nothing to discourage the Bureau from conducting widespread political surveillance. On September 10, the FBI director informed Attorney General Cummings that the "Secretary of State, at the President's suggestion, requested of me, the representative of the Department of Justice, to have an investigation made of subversive activities in this country." Whether Hoover deliberately misled Cummings about the intended scope of these investigations has been the subject of some controversy. If Roosevelt understood that these investigations would focus on espionage and related activities, then Hoover must bear primary responsibility for reviving widespread political surveillance. But if Roosevelt and Cummings did indeed authorize investigations of what Hoover described as "subversive activities", then he must also be held accountable. While it is impossible to determine with complete certainty whether this was the President's intention, Roosevelt undoubtedly shared Hoover's contempt for any formalities that stood in the way of these investigations. Did Roosevelt, then, recognize that Hoover understood the August 1936 order to include not just espionage, but also subversive, activities? If specific federal laws were violated (e.g., the 1917 espionage act), the President would not have had to issue any special authorization for an FBI



investigation. Given the context of the August 24 meeting, it is likely that Roosevelt was interested in information about more than just foreign intrigues, and probably agreed with Hoover that a comprehensive investigation of subversive activities was also necessary. The fact that Roosevelt did not invite the Attorney General to either of the August meetings suggests that Roosevelt encouraged FBI independence from the Justice Department. As he had in 1934, when he ordered an investigation of the Bund, Roosevelt believed that the end-product, accurate intelligence information, was more important than any jurisdictional or administrative questions raised by the Bureau's inquiries. Thus, while the August 1936 order satisfied the FBI's institutional needs (i.e., executive sanction for its general intelligence investigations), it was also characteristic of the New Deal and Roosevelt's personal approach to governing. The directive, Leo Bituffo has observed, "was a product of Roosevelt's distrust of Congress and penchant for secrecy." [11]

Roosevelt did not consult Congress for several reasons. First, despite growing Congressional interest in security-related issues, it is unlikely Congress would have approved a plan calling for renewed FBI general intelligence investigations. Only six years earlier Representative Hamilton Fish's proposal which would have authorized FBI surveillance of political activities had been defeated, even though the bill was introduced on the heels of Fish's investigation of Communist subversion. Similar hearings were not held again until 1938 when the Dies Committee investigated the activities of the German-American

fund. Domestic political considerations may have also entered into the President's calculations. During the 1936 election campaign he claimed that the Communist Party did not threaten the nation's security and criticized his opponents for red-baiting. Roosevelt tried to diffuse the issue in order to reassure his progressive and liberal supporters, maintain the Democratic Party's coalition, and to protect New Deal administrators from unfair criticism. To have asked Congress for permission to investigate his appointees and supporters in 1936 would have been the height of folly. Like Hoover, Roosevelt wanted it both ways, progressive support for his programs and FBI investigations of potential radical critics, and he believed his August 1936 directive would achieve this goal.[12]

Two years later, again at the President's behest, the FBI's intelligence activities were further expanded. In October 1938 Roosevelt appointed Attorney General Cummings to head a committee that would investigate the need for additional "counterespionage" activities. The President may have been reacting to the Czechoslovakian crisis which brought Europe to the brink of war. But the Munich accord, signed in October by Neville Chamberlain and Hitler, postponed armed conflict. Roosevelt probably also took into account serious domestic considerations. Several months earlier, 21 persons were indicted in New York City on espionage charges in the wake of a three month FBI investigation. In June it was alleged that Leon Turrow, the New York SAC during the investigation, had tried to sell information about the plot to newspaper reporters. After the story broke, Roosevelt in an

attempt to allay partisan criticism of the incident, decided to broaden FBI intelligence investigations to deflect possible criticism of the administration. At a June 24 press conference, Roosevelt announced that he had recommended "increased appropriations for FBI counterespionage investigations." [13]

On October 20, 1938 Attorney General Cummings reported to the President that "a well-defined (counterespionage) system was functioning". The system incorporated the FBI, Military Intelligence, and Naval Intelligence, "whose heads were 'in frequent contact and are operating in harmony'." Cummings advised Roosevelt that an additional \$300,000 should be appropriated for these FBI investigations, and \$35,000 each for Military and Naval Intelligence. Cummings did not anticipate any jurisdictional problems and further legislation "to accomplish the general objectives" was neither necessary nor advisable because "the matter should be handled in the strictest confidence." As it had in 1934 and again in 1936, the administration effectively sidestepped Congress and did not seek legislative authorization for the creation of an internal security apparatus. [14]

FBI director Hoover's memorandum on this subject, submitted to the President by the Attorney General on October 20, detailed the plan Cummings had just approved. The FBI had reestablished the General Intelligence Division (GID), which had been abolished by Attorney General Stone in 1924. The purpose was for the GID "to investigate and correlate information dealing with 'activities of either a subversive or so-called intelligence

type'." The intelligence card index, first introduced by Hoover in 1919, was updated for the purpose of identifying persons "engaged in any particular activity, either in any section of the country or in any particular industry or movement." More general information was broken down into specific sub-sections: "Maritime; government; industry (steel, automobile, coal mining, miscellaneous); general strikes; armed forces; educational institutions; Fascist; Nazi; organized labor; Negroes; youth; strikes; newspaper field; and miscellaneous." Hoover boasted that the Bureau had also "developed an extensive library of general intelligence matters, including sixty-five daily, weekly, and monthly publications, as well as many pamphlets and volumes dealing with general intelligence activities. In short, Hoover had restored the Bureau to its pre-1924 status and the FBI could confidently engage in extensive political surveillance once again.[ 15 ]

In this memorandum Hoover insisted that the FBI'S general intelligence program was entirely proper and legal. In 1930, it may be recalled, Hoover had resisted attempts to require the FBI to investigate communist and other "subversive" activities because such legislation would have exposed the Bureau to unnecessary and possibly damaging criticism. The FBI director repeated this theme in his October 1938 proposal:

In considering the steps to be taken for the expansion of the present structure of intelligence work, it is believed imperative that it be proceeded with, with the utmost

degree of secrecy in order to avoid criticism or objections which might be raised to such an expansion by either ill-informed persons or individuals having some ulterior motive. . . Consequently, it would seem undesirable to seek any special legislation which would draw attention to the fact that it was proposed to develop a special counterespionage drive of any magnitude.[ 16]

Roosevelt agreed with the FBI's proposal. On November 2 the President informed FBI director Hoover that he had instructed the Budget Bureau to add \$150,000 to the FBI'S budget request "to handle counterespionage activities." At the same meeting the President told Hoover that "he had approved the plan which [Hoover] had prepared and which had been sent to him by the Attorney General." [ 17]

There was some bureaucratic opposition to Hoover's growing authority. In 1939 an attempt by the State Department to coordinate all domestic intelligence investigations temporarily threatened FBI director Hoover's surveillance program. When he heard about the State Department's proposal, Hoover appealed to Frank Murphy, the newly appointed Attorney General, to resolve the dispute before any serious problems arose. During the First World War, Hoover noted, confusion led to serious intelligence abuses, such as AFL-sponsored vigilantism. The Wilson Administration did not clearly spell out the responsibilities of each intelligence unit (e.g., FBI, Military Intelligence, Naval Intelligence). Consequently, the possibility that these problems would reoccur in the event that the United States entered an international conflict increased considerably. In order to avoid

this situation, Hoover suggested that all intelligence agencies should be required to forward domestic intelligence information to the FBI rather than to the State Department.[18]

Impressed by the FBI director's concern for citizens' rights, Attorney General Murphy agreed to discuss Hoover's proposal with the President. On June 17, 1939 Murphy recommended to Roosevelt that the inter-departmental committee organized a year earlier by Homer Cummings should be disbanded. All "espionage, counterespionage, and sabotage matters", Murphy counseled, should be handled by the FBI and the military intelligence agencies. These agencies, Murphy claimed, "have not only gathered a tremendous reservoir of information concerning foreign intelligence agencies operating in the United States, but have also perfected methods of investigation and have developed channels for the exchange of information, which are both efficient and so mobile and elastic as to permit prompt expansion in the event of an emergency." Roosevelt approved Murphy's proposal and sent a memorandum prepared by the FBI to members of the inter-departmental intelligence committee informing them of his decision. In 1976 the Senate Select Committee on Intelligence found that "(t)his June 1939 directive was the closest thing to a formal charter for the FBI." The directive read:

It is my desire that the investigation of all espionage, counterespionage, and sabotage matters be controlled and handled by the Federal Bureau of Investigation of the Department of Justice, the Military Intelligence Division of the War Department, and the Office of Naval Intelligence in the Navy Department. . . . No investigations should be conducted by any

investigative agency of the Government into matters involving actually or potentially any espionage, counterespionage, or sabotage, except by the three agencies mentioned above.[ 19 ]

Once again the question arises, did Roosevelt mean to narrow the FBI'S jurisdiction to investigations of espionage, counterespionage and sabotage only, or did the President assume that the FBI could legally conduct investigations of "subversive activities" as well. The available evidence suggests that Roosevelt never intended to confine the FBI to investigations of federal laws. In January 1937, for example, Attorney General Cummings forwarded the President FBI reports which alleged that the American Youth Congress was a "Communist Front." The organization had sponsored a pilgrimage to Washington in support of legislation which would benefit the young. Several months later, Cummings sent the White House FBI reports outlining the Communist Party's role in the Workers' Alliance. At the time, the Alliance was organizing a nationwide hunger march to protest continued high unemployment.[ 20 ]

In view of this evidence, it seems more likely that the June 1939 directive was intended to put the State Department on notice that the President wanted the FBI to have a free hand in its internal security investigations. Roosevelt's imprimatur served another vitally important purpose: sidestepping Congress. "Since the FBI no longer wanted to base its domestic intelligence investigations on State Department request," the Senate Intelligence Committee concluded, "some other way had to be found to retain a semblance of congressional authorization." The

language of the directive seemed to indicate that the President only wanted to clarify a troubling situation. The FBI was not specifically authorized to investigate activities which did not violate the law such as "subversive activities". "Yet the scope of the FBI'S assignment ", the Senate panel found, was deliberately vague. "There is no indication that the President's June 1939 directive had the intent or the effect of limiting domestic intelligence to the investigation of violations of the law." [ 21 ]

Later events confirm this assessment. In September 1939, several days after the German invasion of Poland, Roosevelt publicly announced for the first time that he had ordered the Bureau "to take charge" of the government's intelligence investigations. FBI director Hoover learned at this time that the New York Police Department had "created a special sabotage squad." With the Bureau's predominance in the field threatened, Hoover asked the Attorney General to urge the President to "issue a statement or request addressed to all police officials asking them to turn over to the FBI any information obtained pertaining to espionage, counterespionage, sabotage, and neutrality regulations." On September 6, Attorney General Murphy explained to assistant FBI director E.A. Tamm that he had asked the President to comply with the Bureau's request. Later that same day Roosevelt made the following announcement:

The Attorney General has been requested by me to instruct the Federal Bureau of Investigation of the Department of Justice to take charge of investigative work in matters relating to espionage sabotage, and violations of the neutrality regulations. This task must be



conducted in a comprehensive and effective manner on a national basis, and all information must be carefully sifted out and correlated in order to avoid confusion and irresponsibility. To this end I request all police officers, sheriffs, and other law enforcement officers in the United States promptly to turn over to the nearest representative of the Federal Bureau of Investigation any information obtained by them relating to espionage, counterespionage, sabotage, subversive activities and violations of the neutrality laws.[22]

That afternoon, Attorney General Murphy held a press conference to explain the President's order to the public. Alluding to AFI vigilantism, Murphy reminded reporters of the "confusion and laxity and indifference" that had marked security investigations twenty years earlier. In this context, he declared that "[f]oreign agents and those engaged in espionage will no longer find this country a happy hunting ground for their activities." Murphy assured the country that the FBI was "well-prepared and well trained" to handle this kind of work. "If you want this work done in a reasonable and responsible way", Murphy lectured his audience, "it must not turn into a witch hunt. We must do no wrong to any man." Two days later, on September 8, the President declared a national emergency "in connection with and to the extent necessary for the proper observance, safeguarding, and enforcing the neutrality of the United States." Turning to the FBI to enforce the proclamation, Roosevelt ordered the Attorney General to hire 150 additional FBI agents. At an afternoon news conference, Roosevelt warned reporters to "guard against . . . the spread by any foreign nation of propaganda in this country which would tend to be

subversive. . . of our form of government." [23]

Indeed, it was the President, not Hoover, who took the investigative initiative. The ambiguous nature of the September 1939 directive and the tone of his remarks at this press conference again suggest that Roosevelt was aware that the Bureau's investigations were not limited to violations (and possible violations) of federal statutes. If this was not the case, the situation changed dramatically during the next few months. In early 1940, President Roosevelt announced that he would support increased defense spending and the destroyer-bases deal with Great Britain. Believing that neutralism threatened the nation's security and after his decision had come under sustained criticism from prominent neutralists, Roosevelt ordered the FBI to investigate persons who had sent telegrams to the White House protesting this and other foreign policy decisions. In a May 1940 cover letter to FBI director Hoover, presidential assistant Stephen Early noted that "(a)s the telegrams all were more or less in opposition to national defense the President thought you might want to look them over." On June 17, Early sent the names of persons who had supported Charles Lindbergh's critique of Roosevelt's policies to FBI director Hoover. Apparently, the Bureau investigated the individuals and returned the lists to the White House with "comment, and reports." In a show of appreciation for the Bureau's cooperation, Roosevelt asked an aide "to prepare a nice letter to Edgar Hoover thanking him for all the reports and investigations he has made." In 1941 when the White House asked FBI director Hoover to investigate

opponents of Lend-Lease, the FBI checked its files, tapped telephones, planted bugs and shadowed individuals named by the White House staff.[ 24]

The FBI also investigated many groups and individuals without prior White House approval. In early 1941, after the Navy Department alerted the Bureau that "fifteen colored mess attendants" had organized a protest against racial discrimination, the FBI began an extensive investigation of the National Association of Colored People (NAACP). Although the Bureau failed to turn up any evidence "that there is any Communist infiltration" of the NAACP, the investigation continued through the mid-1970's. Other non-partisan organizations that were scrutinized by the FBI included the American Friends Service Committee, Women's International League for Peace and Freedom, Fellowship for Reconciliation, National Council for the Prevention of War and the League for Fair Play. The FBI investigation of the New York-based League for Fair Play yielded information that the organization booked "speakers to Rotary and Kiwanis Clubs and to schools and colleges, but the Bureau found no "indications of Communist activities." [25]

Roosevelt's attitude toward Congress and constitutional rights is illustrated by his decision to allow the FBI to install wiretaps to develop information concerning "subversive activities". In 1940 federal law prohibiting the use of wiretaps was somewhat ambiguous. In 1931, when the Bureau of Prohibition was transferred from Treasury to Justice, Attorney General

William Mitchell lifted Attorney General Stone's ban on FBI wiretapping. Wiretaps, however, were to be limited to investigations involving espionage, sabotage, and life-threatening situations such as kidnapping, and could only be installed with the FBI director's prior approval.

Congress had also restricted wiretapping. The Federal Communications Act of 1934 prohibited any person from intercepting "any communication" and divulging or publishing "the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person." Yet the FBI continued to use wiretaps in criminal investigations after the bill was signed into law by the President. In 1937, in U.S. v. Nardone, the Supreme Court rejected the government's argument that Congress did not mean to prohibit wiretapping by federal agencies and ruled that evidence obtained using wiretaps was inadmissible in court. In a somewhat peculiar interpretation of Nardone, the Justice Department concluded that wiretapping itself was permissible and the court meant only to prohibit the interception and divulgence (emphasis added) of telephonic or telegraphic messages in court. In March 1940, Attorney General Robert Jackson reviewed this policy and subsequently prohibited FBI wiretapping in criminal and intelligence investigations. Jackson ordered the Bureau to restore a rule which listed wiretapping as an unethical practice.[26]

Nevertheless, the reform "proved to be short-lived." In June President Roosevelt notified the Attorney General that he wanted the ban on wiretapping lifted. It is possible, although there is no evidence to prove this, that FBI director Hoover appealed to the President to change the policy because he thought it inhibited effective intelligence gathering. Roosevelt, echoing the department's earlier interpretation of Nardone, told Jackson "I am convinced that the Supreme Court never intended any dictum in the particular case which it decided to apply to grave matters involving the defense of the nation." Roosevelt concluded:

You are therefore authorized and directed in such cases as you may approve, after investigation of the need in each case, to authorize the necessary investigating agents that are at liberty to secure information by listening devices directed to the conversation or other communications of persons suspected of subversive activities against the United States, including suspected spies. You are requested furthermore to limit these investigations so conducted to a minimum and to limit them insofar as possible to aliens.[27]

At about the same time, Congressional proponents of federal wiretapping introduced legislation which would have had the effect of repealing Section 605 of the 1934 Communications act. Although the administration endorsed these bills, the House Judiciary Committee refused to support the legislation. The administration did advise the Committee that it considered wiretapping permissible if evidence collected through electronic surveillance was not used in criminal prosecutions.[28]

In October 1941 the public learned about the administration's wiretapping policy. Attorney General Francis Biddle was forced to acknowledge that he had authorized the FBI to tap telephones after Harry Bridges discovered that the FBI had used taps in an on-going investigation of his activities. During a press conference Biddle confirmed that the Justice Department "would continue to construe the (1934 Communications) Act, until the Courts decided otherwise, not to prohibit the interception of communications by an agent." The Attorney General reassured reporters that the FBI had used wiretaps "sparingly" and only when the Attorney General had authorized their use. President Roosevelt, who seemed annoyed by the whole affair, steadfastly supported Biddle's position. When briefed privately by Biddle and Hoover about the Bridges wiretap, Roosevelt quipped with a touch of malice: "Ey . . . , Edgar, that's the first time you've been caught with your pants down.[29]

Roosevelt tolerated and encouraged FBI surveillance of lawful political activities and allowed the FBI to resume warrantless wiretapping. But there is no evidence that the President ordered the FBI to develop contingency plans for the detention of "dangerous" individuals, if and when the United States entered the war. On the other hand, the latitude that Roosevelt allowed the FBI in internal security matters probably contributed to the Bureau's independence and fostered Hoover's cynicism and contempt for the law. Of course, the implementation of the custodial detention program was not the first time the FBI director had ignored department policy and federal law. But the

unilateral creation of a detention plan was substantially different than political surveillance in violation of Attorney General Stone's 1924 order. While closely related to "pure intelligence", "preventive intelligence" has, by its very nature, a greater potential to do violence to constitutional rights. Preventive or aggressive intelligence violates not only an individual's right to privacy and free expression, but also reduces the Fifth and Sixth Amendments to meaningless phrases. Thus, having journeyed once again through the locking glass and discovered anew the attraction of summary justice, FBI director Hoover decided that during a national emergency it became the Bureau's duty to try, convict and sentence secretly those who "questioned the American way of life." [30]

The FBI initiated the program on September 2, 1939, when director Hoover notified all SAC's to compile the names of persons "of German, Italian, and Communist sympathies. . . whose interest may be primarily directed to the interest of some other nation than the United States." The lists would include subscribers to German and Italian language newspapers, newspapers published by the Communist party and "its affiliated organizations", and newspapers of "pronounced or notorious Nationalistic sympathies." Field offices were also required to identify members of German and Italian fraternal organizations and of "any organizations, regardless of nationality, which might have procured Nationalistic tendencies." Following this request, FBI field offices recruited new informers and strengthened its ties to private investigative organizations.

Bureau agents also attended "mass meetings and public demonstrations" and undertook confidential inquiries of "'radical and fascist organizations in the United States' for the purpose of identifying their 'leading personnel, purposes and aims, and the part they are likely to play at a time of national crisis'." [31]

Several weeks later, on November 9, assistant director E.A. Tamm advised Hoover that the Bureau had started to prepare a list of individuals "on whom information is available indicating strongly that (their) presence at liberty in this country in time of war or national emergency would constitute a menace to public peace and safety of the United States Government." Both citizens and aliens who had demonstrated "strong" Nazi or Communist "tendencies" were included on the detention list. On December 6, FBI director Hoover notified all SAC's that the Bureau was preparing a detention list. "In the near future", the director informed the field offices, the Bureau would request them to develop information "from confidential sources" necessary "to enable the rendering of a decision as to the action to be taken relative to the individuals concerned in the event (of an emergency)." Hoover advised his SAC's that these investigations were to be conducted in strictest confidence and that the "color of authority under which this matter is handled is, of course, the Registration Act." The Bureau developed two categories for those on the detention list: 1) persons "to be apprehended and interned immediately" in case of war or national emergency; 2) persons "who should be watched carefully. . . because their



previous activities indicate the possibility but not the probability" that they would endanger the national security.[32]

In June 1940, about a year after the Bureau had established its own custodial detention plan, FBI director Hoover asked Attorney General Robert Jackson for "policy guidance concerning a suspect list of individuals whose arrest might be necessary" in the event of a national emergency. Unaware that the Bureau had already drawn up lists of suspects and had developed contingency plans for the arrest of "dangerous" individuals, Jackson consulted Secretary of War Henry Stimson before responding to Hoover's request. Stimson recommended that any emergency plans "providing for the custody of such enemy aliens as may be ordered interned" should be coordinated by the military and Justice. For that purpose, Jackson created a Neutrality Laws Unit (later renamed the Special War Policies Unit) to analyze and evaluate FBI reports and to review decisions to place individuals on the custodial detention list.[33]

Initially Hoover resisted the Attorney General's plan for Department oversight of the detention program. Hoover may have wanted to cover-up the fact that he had ordered the FBI to develop a detention program without receiving prior department approval. And given Stimson's reply that only "enemy aliens" should be considered for preventive detention, it is likely that the Attorney General and the FBI director had radically different plans for the program, Hoover's being broader and more inclusive. In any event, on November 28, 1940, Hoover advised L.M.C. Smith,

head of the Justice Department's Special Unit, that Jackson's proposal widened "the very definite possibility of disclosure of certain counter-espionage activities." The news continued:

We in the FBI have endeavored to assure the utmost secrecy and confidential character of our reports and records. To turn over to the Department this great collection of material in toto. . . means that the Department must assume the same responsibility for any leaks or disclosure which might be prejudicial to the continued security of our country.

Fearing that the Bureau's sources would be compromised, Hoover cautioned against immediate prosecution of any individuals who were on the FBI's detention list. If charges were brought against any of these persons, Hoover claimed, "the identity of confidential informants now used by the Bureau would become known." If the Department's plan was approved, Hoover sternly warned, the FBI would then be forced "to abandon its facilities for obtaining information in the subversives field." [34]

Several months later, after negotiators from the Justice Department and the FBI had failed to reach a compromise, the Attorney General ordered Hoover to turn over its detention index and its dossiers to the Special Unit. Jackson guaranteed FBI director Hoover that the identity of the Bureau's sources would remain confidential and that the plan "does not involve any abandonment by the Department of its present facilities for obtaining information in connection with subversive activities by surveillance and counterespionage." [35]

In the same memorandum, the Attorney General outlined the department's official custodial detention policy. Following a Presidential proclamation, the Attorney General would issue warrants for the arrest of aliens whose presence in the United States constituted a clear danger to the nation's security. The Attorney General would also issue the arrest warrants on the authority of the President's proclamation. American citizens not targeted for detention but whose loyalty was questionable would be charged with violating the Smith (peacetime sedition) Act or other relevant federal statutes. The FBI generally accepted the Attorney General's proposal, but later expanded its suspect list to include members of the Socialist Workers Party, the Proletarian Party, the Lovestoneites, "or any of the other Communistic organizations, or . . . their numerous 'front' organizations." [36]

While this list, compiled in 1941, was more comprehensive than the Attorney General's, it does not adequately indicate the scope of the preventive detention investigations and listings. The case of Congressman Vito Marcantonio, though it may not be typical, is certainly instructive. On May 30, 1941, Marcantonio delivered a radio address criticizing the President's proclamation of a national emergency. Soon thereafter the FBI investigated the congressman and recommended that he be listed for custodial detention. On July 28, 1941, FBI director Hoover, bypassing Special Unit chief Smith, sent the recommendation directly to assistant attorney general Matthew McGuire "(i)n view of the special circumstances in this case." Hoover then asked

Murphy if it would be appropriate to send a copy of the request to Smith and the Special Unit, but there is no indication as to McGuire's response because in 1978 the FBI could find no reference to custodial detention in Marcantonio's file. It is possible that the Justice Department, in cooperation with the FBI, developed a separate detention index for listing "prominent persons", references to which would not be filed in the FBI's main indices for security purposes. In any case, it is likely that prior to the Second World War the Bureau listed other prominent individuals on the detention index for, among other things, criticizing administrative policy.[37]

After ordering the FBI to investigate "subversive activities" in August 1936, Roosevelt may have advised selected members of Congress that he had rescinded Stone's 1924 order, but Congress was not formally consulted either before, or immediately after, he had reached his decision. Presumably, Roosevelt believed that such consultation would have threatened the confidentiality of these inquiries, or might have re-opened the debate on constitutional questions raised by federal surveillance of non-criminal activities. His indifference toward the constitutionality of his decision is further evidenced by the fact that he relied exclusively on the FBI director's interpretation of the 1916 Appropriations Act without ever consulting his Attorney General. One is left to conclude that Roosevelt's primary goal was to get the job done quietly, with a minimum of concern for legal or administrative rules that stood in his way.

Congress was first apprised of the FBI'S surveillance activities in November 1939, nearly three and a half years after these investigations had been intensified at the request of the President. In testimony before the House Appropriations Committee, FBI director Hoover acknowledged that the Bureau had re-established a General Intelligence Division to investigate "all complaints of violations of the national defense statutes." When asked under what authority the Bureau had expended funds for intelligence investigations, Hoover claimed by "authority of the President's (September 1939) proclamation." Several weeks later, Hoover appeared again before the House Appropriations Committee and changed his explanation. Asked once again to justify the Bureau's intelligence operations, Hoover referred to the President's September 6, 1939 statement which directed that "there be coordinated under the FBI all the matters of investigative work relating to espionage, sabotage, and violations of the neutrality regulations, and any other subversive activities (emphasis added)." Hoover apparently settled on this explanation and repeated it six months later before the same committee.[38]

Members of the Appropriations Committee were generally sympathetic with the administration's internal security policies. Several congressmen, however, expressed concern that the Bureau would be permanently changed by executive decree. In November 1939 Representative Clifton A. Woodrum asked the FBI director if the agents hired to enforce the President's proclamation would "be kept on through the next fiscal year." "(I)f the emergency

continues," Hoover replied, they would be. "And if the emergency ceases the need for the additional force will cease?" Hoover answered "yes". In February 1941 a similar exchange took place.

{Representative Louis L.} Ludlow. At the close of the present emergency, when peace comes, it would mean that such of this emergency work necessarily will be discontinued

Mr Hoover. This is correct.

{Representative John} Taker: Is your set-up for national defense work separate from the other work?

Mr. Hoover. It is. . . If the national emergency should terminate, the structure dealing with national defense can immediately be discontinued or very materially curtailed according to the wishes of Congress.[39]

As noted earlier, Hoover revealed that the Bureau had reestablished the General Intelligence Division. The GID, Hoover carefully explained, had "compiled extensive indices of individuals, groups, and organizations engaged in . . . subversive activities, espionage activities, or any activities that are possibly detrimental to the internal security of the United States." Alluding briefly to the Bureau's custodial detention program, Hoover informed the committee that:

These indexes have been arranged not only alphabetically but also geographically, so that at any time, should we enter into the conflict abroad, we would be able to go into any of these communities and identify individuals and groups who might be a source of grave danger to the security of the country. Their backgrounds and activities are known to the Bureau. These indexes will be extremely important and valuable in grave emergency.[39]

This rather obscure reference was the closest the administration came to informing Congress that contingency plans for custodial detention had been drawn up. And although it led to some criticism in the liberal press, the Appropriations Committee made no effort to compel Hoover to elaborate.[41]

Given growing Congressional conservatism after the 1938 election, it is not surprising that Congress did not scrutinize the administration's internal security programs more closely. Indeed, Congress shared many of the President's concerns about the threat of domestic communism, and to a lesser degree, fascism. Throughout the 1930's, legislation to prohibit the distribution of communist propaganda had been introduced in Congress. But not until 1938, when the House Special Committee on Un-American activities (Dies Committee) first investigated allegations of communist infiltration of the federal government, did the sponsors of peacetime sedition legislation attract substantial support. Two years later, after the international situation had dramatically deteriorated, Congress approved and the President signed the Alien Registration (Smith) Act. But as Zechariah Chafee later explained: "[The Smith act] is no more limited to the registration of aliens than the Espionage Act was limited to spying. . . (and places) the most drastic restrictions on freedom of speech ever enacted in the United States during peace." In its final form, the Smith Act was a combination of bills that had been proposed as early as 1935 and, in essence, was the peacetime sedition law FBI director Hoover had long supported. In fact, Congress passed the Smith Act in

lieu of a proposal introduced by Representative Emanuel Celler (Dem., N.Y.) that would have chartered the FBI. The joint resolution would have empowered the Attorney General to authorize the FBI to conduct investigations to "ascertain, prevent, and frustrate any interference with the national defense by sabotage, treason, seditious conspiracy, espionage, violations of the neutrality laws, or in any other manner." But since the Smith Act made the advocacy of radical and communist ideas illegal, there was no pressing need to pass the Celler resolution.[42]

Despite this growing consensus, it would be incorrect to conclude that Congress had issued the administration a blank check which allowed the President to order investigations of his foreign policy critics. Several congressmen exhorted the administration not to violate due process and other constitutional rights in the name of national security. The most dramatic confrontation between Congress and the administration occurred in early 1940. In February, George Norris, the venerable senator from Nebraska who first raised the issue of FBI accountability in 1913, alleged that FBI agents in Detroit and Milwaukee had mistreated 12 members of the Friends of the Abraham Lincoln Brigade when they arrested them on February 5 in early morning raids. The defendants had been active in the "Friends" several years earlier and had actively recruited people to join the Abraham Lincoln Brigade and fight in the Spanish Civil War. In late January a federal grand jury had handed down secret indictments of the 11 men and a woman for violating an 1818 law which prohibited the recruitment in the United States of persons



to serve in a foreign conflict.[43]

Senator Norris did not take issue with the arrests per se, but rather the manner in which they were conducted. The alleged activities of the defendants, Norris asserted, were merely a technical violation of the law, yet the FBI had treated the twelve as if they were accused of some heinous crime. The arrests were conducted simultaneously at five A.M. In one case, an FBI agent misrepresented himself as an ailing patient to gain entry into the home of a physician. In two separate incidents, agents broke down the doors of the homes of frightened suspects who thought they were thugs and hoodlums who were trying to kidnap them. Premises were searched without warrants and documents and other personal papers seized without cause. Families and relatives were not advised as to the charges against the defendants. The defendants were held incommunicado for nine hours, and, without being allowed to confer with their lawyers, and questioned about their political beliefs and activities. Unnecessarily high bail was set, preventing most of the accused from posting bond.[44]

On February 22, Norris outlined these complaints in a letter to Attorney General Jackson and asked him to investigate these allegations. A week later, the Attorney General replied. The charges were undoubtedly serious, Jackson conceded, because "in this field. . .there is the gravest danger that the legitimate protection of the government might be perverted toward such activities as the suppression of free speech and press, toward

anti-labor and anti-reform activities, and toward the disregard of civil liberties." Still, the Attorney General insisted that the FBI agents were not guilty of any wrongdoing. The circumstances compelled the Bureau to conduct early morning raids in order to prevent the suspects from avoiding arrest or warning others of their impending arrest. The agents had fully complied with department rules during the interrogation and had not questioned the accused about their past political activities. Nevertheless, Jackson announced that he had ordered all of the charges dropped. The department would not be able to investigate all similar activities, he explained, and it "would be manifestly unjust to single out these Detroit defendants." The Attorney General concluded:

One of the first steps which I took upon assuming office to review the activities and the attitude of the FBI, with which my previous duties had not made me familiar, with its director, J. Edgar Hoover. Mr. Hoover is in agreement with me that the principles which Attorney General Stone laid down in 1924 when the FBI was reorganized and Mr. Hoover appointed as Director are sound and that the usefulness of the Bureau depends upon a faithful adherence to those limitations. (emphasis added) "[45]

Not satisfied with the Attorney General's reply Norris sent Jackson a more comprehensive review of evidence of FBI mistreatment. Norris suggested that he examine this material before dismissing the defendants' allegations. On February 28, Norris brought these charges to the attention of the Senate. Norris warned that the same General Intelligence Division had been responsible for the infamous "Palmer Raids". The Detroit

arrests were grim reminders that the FBI still chose to act first and ask questions later. But the confused legal basis for FBI internal security operations made it difficult for the Senator to offer a legislative solution to the problem. Max Lowenthal, who did much of the Senator's research into this question, argued that Congress had never explicitly granted the FBI the authority to investigate any activities other than violations of the federal laws. Allegedly subversive activities did not satisfy this requirement, but in the absence of hard evidence that the FBI was conducting politically-motivated investigations, critics were hard-pressed to challenge the Attorney General's claim that the FBI was operating within Stane's 1924 guidelines. Only a special Congressional committee with the power to subpoena necessary documents could settle the question. For that reason, Norris repeated his request that the Senate authorize an investigation of the administration's internal security investigations.[46]

After Senator Norris voiced his concerns on the Senate floor in March, many of the nation's most prominent and respected newspapers called for an independent Congressional investigation. "Since responsible men have said there is evidence that the FBI has used illegal methods of law enforcement and gone beyond the boundaries of its job", the New York Post wrote, "the nation has a right to know whether or not the charges are correct." The Philadelphia Inquirer concluded: "By all means let there be a comprehensive inquiry into (Norris') charges; into spying, sneaking, snooping, framing and trapping that have been going on

in the long-suffering name of Justice." "There must be no OPGU (i.e., the Soviet Secret police) taint on the FBI or any other police agency." Even the more conservative New York Daily-News concurred: "Mr. Hoover is widely believed nowadays to be building up a secret police organization of un-American complexion. . . (w)e sympathize with Senator George Norris when he writes. . . an urgent request to put 'a strong restraining' hand on Hoover's FBI 'to keep it within bounds'." [47]

In response to this pressure, the Attorney General commissioned Henry Schweinhart, assistant attorney general in charge of the department's civil liberties division, to conduct a thorough inquiry into the February raids. In May, following a month and a half long investigation, Schweinhart dismissed Norris' charges. The evidence showed that while a few agents might have been somewhat overzealous, the rights of the former defendants had not been systematically violated. Norris, for example, had criticized the Bureau for using "third-degree" tactics during the interrogations that followed the arrests. After interviewing FBI agents, many of the former defendants, and other individuals, Schweinhart concluded that the "defendants were adequately informed of their right not to incriminate themselves and that no compulsion was used to make them do so." Norris complained that unwarranted searches and seizures attended the arrests. Schweinhart reported that the agents were "following instructions" and that the "searches and seizures. . . were conducted in full accord with the regulations of the FBI." The other allegations were either dismissed or similarly

explained away.

On May 3, in a letter to Norris, Attorney General Jackson defended the findings of the Schweinhaut report. Norris' concerns were admittedly important and deserved the department's full attention, the Attorney General wrote. But he was convinced that "the agents in Detroit acted within their instructions and exercised their discretion in good faith." If "traditional civil liberties. . . are generally endangered in this country", Jackson continued, "it is not by the FBI." Jackson repeated the Bureau's own (erroneous) claim that 96% of all cases investigated and prosecuted with the assistance of the FBI, ended in conviction, and that since 1924, no conviction thus reached had been overturned on appeal "because of 'third degree' or other improper treatment of defendants." "I am confident", Jackson confided, "that the more the operations of the Bureau are explored the more it will appear that its vigorous and effective work for law enforcement is conducted with a fundamental purpose to observe the rights of the defendants." [48]

Not everyone was as impressed with the Schweinhaut report. On May 11, The Nation called it an odd document: "Its tone absolves and approves. Its findings - and its omissions - condemn." Senator Norris was more blunt and referred to the report as a "whitewash". On May 7, in a four and half hour speech, the longest of his career, Norris read into the record evidence which he claimed the Justice Department had ignored and concluded that "the methods being pursued by the FBI are wrong,

and if continued, mean the destruction of human liberty in the United States." [49]

The senator's criticism of the FBI attracted a great deal of public attention, making him a lightning rod for both pro and anti-FBI opinion. The letters Norris received following his condemnation of the Detroit raids ran almost 4 to 1 against the FBI. These letters may not adequately reflect public opinion but they at least representative of concerned sentiment regarding civil liberties on the eve of the Second World War. Not surprisingly, many of the reactions were quite emotional, others were more tempered and reasoned. Some individuals and groups criticized Norris for playing into the hands of the communists, anarchists, criminals and other "un-Americans". According to these individuals, Norris himself had done considerable damage to the nation's internal security in particularly dangerous times. A sample of critical responses follow:

"Your attempts to smear Mr. Hoover are too transparent to dignify with conversation. The whole New Deal stench is becoming disgusting."

"Who is instigating this attack on Mr. Hoover. . . Is it that Mr. Jackson is a bit pink and is afraid to find out as to the activities of the Communists?"

"I wish. . . to voice (my) disapproval of the 'smear J. Edgar Hoover' campaign which is being carried on by men in Washington who should be intelligent enough to know what harm they may be causing by their vindictive attacks."

"When there is a prize on protecting treachery and condemning real patriotic citizens and the enforcement of Constitutional law you will win this lccby prize."

"I feel that the responsibility for smoking out these subversive movements should be left in the

hands of the FBI and J. Edgar Hoover, since after all these anti-american (sic) forces are really invading armies not individuals, and should be treated as such."

"Our criminal and subversive elements are gloating with joy. . . Sucker commentators and sucker politicians who have allowed themselves to be duped into support of this sabotage are unwittingly doing great harm."

"(Y)our criticisms can only encourage the criminal element of our nation. . . I would favor giving (the FBI) still more power to strangle this viperous element in our country."

Senator Norris drew support from civil liberties organizations, labor unions, writers, newspaper editors, academics, and a good many private citizens who were not affiliated with any particular organization. This support suggests that many conscientious Americans were not ready to sacrifice traditional political freedoms at the altar of national security. A sample of these responses follows:

"If we are to lose our civil liberties, what will other things be worth? If it were not for a few courageous men like you, petty bureaucrats could get away with infamies."

"(W)e again urge upon you the immediate necessity of conducting a thorough investigation of the activities of the FBI in order to insure that our Bill of Rights and our civil liberties will not be jeopardized by this Bureau."

"With the world in its present turmoil. . . it is our feeling that any threat to Constitutional guarantees becomes infinitely more serious than it might be under other conditions. . . With these things in mind, we respectfully request a full Senatorial investigation of the FBI."

"No agency in this government can afford to be illegal in its effort to wipe out so-called radical and communistic activities."

"I appreciate your courage in this and other

matters affecting the liberty and well-being of the United States citizen."[50]

If many did indeed support a congressional investigation of the FBI and favored a more balanced approach to solving internal security problems, Congress did not share this opinion. Senator Norris' proposal for an investigation of the Detroit raids attracted little or no support. Similarly, the Senate Interstate Commerce committee, which investigated federal wiretapping policies in 1940, ignored charges that the FBI had tapped telephones in violation of the 1934 Communications Act. The committee never explained this decision, but administration officials may have warned committee chairman Burton K. Wheeler that such an inquiry would endanger the nation's security. Thus, as the international crisis grew more serious, Congress once again refused to exercise its authority to oversee the activities of the FBI and at the eve of the Second World War, the constitutional questions first raised when the Bureau was created in 1908 remained unresolved. Only with in the context of this series of failures can the intelligence abuses of the Cold War years be adequately explained.[51]



## NOTES

1) SDSF, 391-399; HIA, 560-572; Thecharis, Spying on Americans, 65-77; Donner, Age of Surveillance, 52-64.

2) Donner, Age of Surveillance, 62-64; Lowenthal, FBI, 315-329; Whitehead, FBI Story, 170-180.

3) Jane Perry Clark, Deportation of Aliens, 225. Several State Department officials with whom Hoover shared intelligence information, for example, knew that the FBI had investigated political activities after 1924, but it is not likely that these same officials were aware of the scope of these operations.

4) HIA, 559-562; Donner, Age of Surveillance, 53-54; Richard Steele, "Franklin Roosevelt and His Foreign Policy Critics," Political Science Quarterly 94 (Spring 1979), 16-32.

5) SDSF, 393-394; Thecharis, Spying on Americans, 67-68; see Zilg, Behind the Nylon Curtain (New York, 1974), for additional information about the Liberty League's attempt to overthrow the Roosevelt administration. See also, Sander T. Diamond, The Nazi Movement in the United States, 1924-1941 (Ithaca, 1974); Geoffrey S. Smith, To Save a Nation: American Counter-Suversives, the New Deal and the Coming of World War II (New York, 1972). Thecharis, Spying on Americans, 67. SDSF,

392-94; HIA, 561-63; Donner, Age of Surveillance, 53-55.

7) IARA, 24-26; SDSR, 394-95; HIA, 561-62; Theoharis, Spying on Americans, 69-70; Donner, Age of Surveillance, 53-55.

8) HIA, 561-62; IARA, 24-26; SDSR, 394-95; Theoharis, Spying on Americans, 69-70; Donner, Age of Surveillance, 53-55. SDSR, 396-97; Theoharis, Spying on Americans, 69-70; See also, General Index, FBI Investigative Records, 1908-1922, National Archives, Washington, D.C.

10) SDSR, 397-398; Theoharis, Spying on Americans, 70; Donner, Age of Surveillance, 54-55.

11) Theoharis argues that FBI director Hoover developed a much broader surveillance program than the one envisioned by FDR in August 1936. But Theoharis bases his assertion on the semantic differences between the President's public statements and internal FBI memorandums. Theoharis is correct when he maintains that FDR never publicly authorized the FBI to investigate "subversive activities" and that this particular phrase appears only in memos circulated by the FBI. Yet Theoharis minimizes or ignores evidence that suggests that FDR encouraged the investigation of lawful political activities. Nor does he explain why the President did not invite the Attorney General to the August 1936 meetings to represent the Justice Department. Leo Ribuffo, "Civil Liberties For Villains? The Roosevelt Administration and the Far Right," 17, paper delivered at the 1979 Organization of American Historians meeting, New

Orleans, La. SDSR, 396-97; Donner, Age of Surveillance, 54-55; Theoharis, Spying on Americans, 70-71.

12) William E. Leuchtenburg, Franklin D. Roosevelt and the New Deal, 1932-1940 (New York, 1963), 184-189. In January 1936, for example, Al Smith told members of the Liberty League that the New Deal had taken a dangerous turn toward socialism. "It is all right with me if (members of the Roosevelt Administration) want to disguise themselves as Norman Thomas or Karl Marx, or Lenin, or any of the rest of that bunch. But what I won't stand for is allowing them to march under the banner of Jefferson, Jackson and Cleveland." Leuchtenburg, 178. George Wolfskill and John Hudson, All but the People: Franklin D. Roosevelt and His Critics, 1933-1939 (London, 1969), 93-116. Unknown to Roosevelt, the FBI used Elizabeth Dilling's book, The Red Network: A Handbook of Radicalism for Patriots (Chicago, 1934) as a reference source. The book was virtually a Who's Who of American liberalism, and listed such prominent persons such as Felix Frankfurter and Zechariah Chafee Charles Evans Hughes, and Harlan Fiske Stone as communist sympathizers. See "American Friends Service Committee," undated FBI memorandum, FBI files, American Friends Service Committee, Philadelphia, Pa. Hcod report, 1/30/41, FBI files, ILD; Washington, D.C. field office report, 12/29/40, FBI files, ILD. Roosevelt's strategy backfired following his death when the FBI, in concert with conservative congressmen and the House Un-American Activities Committee, turned on New Deal luminaries such as Harry Dexter White and Alger Hiss. By giving FBI director Hoover authority to investigate radical activities in

1936 without taking the necessary precautions virtually insured FBI involvement in the post-war purge. See, Theoharis, Spying on Americans; Donner, Age of Surveillance; Kenneth O'Reilly, "Artful Dissemination: The FBI - HUAC's Big Brother," The Nation 230 (January 19, 1980), 42-45; Victor Rabinowitz, In Re Alger Hiss (New York, 1979); In Re Alger Hiss, volume II (New York, 1980); David Cate, The Great Fear: The Anti-Communist Fugue Under Truman and Eisenhower (New York, 1978).

13) SDSR, 397-99; Theoharis, Spying on Americans, 70-71; Donner, Age of Surveillance, 56.

14) HIA, 565-67; IARA, 25-27; SDSR, 397-99; Theoharis, Spying on Americans, 71-72.

15) HIA, 566-68; SDSR, 398-99; Theoharis, Spying on Americans, 72.

16) Donner, Age of Surveillance, 48-50; HIA, 555-57; SISF, 398.

17) SISF, 397-98; Theoharis, Spying on Americans, 72; Donner, Age of Surveillance, 56-57.

18) SISF, 400-401; Theoharis, Spying on Americans, 72-73; Donner, Age of Surveillance, 56-57.

19) HIA, 568-70; SDSR, 401-03; Theoharis, Spying on Americans, 72-73; Donner, Age of Surveillance, 57-58.

20) Richard Steele, "Franklin Roosevelt and His Foreign Policy Critics", 16-18; SDSR, 414-15; Theoharis, Spying on Americans, 156-158; Donner, Age of Surveillance, 57-58.

21) SDSR, 402-03; Theoharis, Spying on Americans, 73-74.

22) HIA, 570-73; SDSR, 403-405; Theoharis, Spying on Americans, 74-75; Donner, Age of Surveillance, 58-60.

23) SDSR, 404-405; Thechais, Spying on Americans, 74-75; Donner, Age of Surveillance, 58-60.

24) Steele, "Franklin Roosevelt and His Foreign Policy Critics", 15-32; Theoharis, Spying on Americans, 156-59.

25) SDSR, 414-415; FBI files, WILEF, AFSC, ACIU.

26) SDSR, 277-279.

27) SDSR, 279.

28) SDSR, 280.

29) SDSR, 277-81; Theoharis, Spying on Americans, 97-100; Theoharis and Elizabeth Meyer, "The 'National Security' Justification for Electronic Surveillance: An Elusive Exception," Wayne Law Review 14 (Summer 1968), 749-771.

30) SDSR, 412-414; Theoharis, Spying on Americans, 41-42; Donner, Age of Surveillance, 147-150; Caroline Ross and Ken Lawrence, J. Edgar Hoover's Detention Plan: The Politics of Repression in the United States, 1939-1976 (Jackson, 1978), 3-6.

31) SISR, 412-413; Theoharis, Spying on Americans, 41-42; Ross and Lawrence, Hooover's Detention Plan, 3-4.

32) SDSF, 413-414; Theoharis, Spying on Americans, 41-43.

33) SISR, 417-19; Theoharis, Spying on Americans, 41-43.

34) IAFA, 34-35; SISR, 418-419; Theoharis, Spying on Americans, 42-43.

35) SISR, 418-419; Theoharis, Spying on Americans, 42.

36) SISR, 418-419.

37) Theoharis, "The Problem of Purging FBI Files," USA Today (November 1978), 48-50. Also see, Kenneth Waltzer, "The FBI, Congressman Vito Marcantonio, and the American Labor Party," in Theoharis, ed., Beyond U.S. v. Hiss: The FBI, Congress and the Cold War, forthcoming. In the 1940's the FBI developed a "Do Not File" file to prevent the disclosure of sensitive documents like the Marcantonio detention file correspondence. In addition to the "do not file" procedure, Hoover maintained a confidential file "in which are kept various and sundry items believed inadvisable to be included in the general files of the Bureau." Reports on the surveillance of organizations (e.g., IWW, NAACP, and AFL) and individuals (Eamon DeValera, Harry Weinberger, Robert LaFollette, William E. B. Dubois, and Hiram Johnson) were included in the confidential files. The "do not file" files and the confidential files, Theoharis writes, enabled "the FBI director to influence official policy, key political leaders, and

through carefully orchestrated press leaks, public opinion." In Richard Nixon's words: "(Hoover) had files on everybody." Theoharis, Spying on Americans, 157; Donner, Age of Surveillance, 114.

38) SISE, 407-409; IARA, 28-30.

39) SISE, 407-408.

40) SISE, 408-409; IARA, 28-30.

41) SISE, 408-409; "Our Lawless G-Men," The Nation 150 (March 2, 1940), 296-297; "(L)ists of persons he considers dangerous have been compiled by J. Edgar Hoover," the editor explained, "for a mass roundup in the event of war or 'grave emergency'."

42) See generally James Patterson, Congressional Conservatism and the New Deal (Lexington, 1967); Richard Polenberg, "The Decline of the New Deal, 1937-1940," in John Braeman, et al., The New Deal: The National Level (Columbus, 1975), 246-266. August R. Oaden, The Dies Committee (Washington, 1946); Richard Polenberg, "Franklin Roosevelt and Civil Liberties: The Case of the Dies Committee," Historian 30 (1968-69), 165-78; Zechariah Chafee, Jr., Free Speech in the United States (Cambridge, 1941), 440-493; SDSR, 280.

43) Richard Lowitt, George W. Norris: The Triumph of a Progressive, 1933-1944 (Urbana, 1978), 293-98; Congressional Record (February 26, 1940, 1980-81; "American OPGU," The New

Republic 102 (February, 26 1940), 230-31; Civil Rights Federation, FBI Detroit: The Facts Concerning the FBI Raids in Detroit (Detroit, 1940).

44) Civil Rights Federation, FBI Detroit, 4-8; Norris to Jackson, 2/22/44, box 106, George Norris MSS, Library of Congress, Washington, D.C.

45) Norris to Jackson, 2/22/40; Jackson to Norris, 3/1/40, box 106, Norris MS; Civil Rights Federation, FBI Detroit, 9-10.

46) Norris to Jackson, 3/19/40, box 106, Norris MSS.

47) FBI Detroit, 12-13; Philadelphia Inquirer, March 13, 1940 N.Y. Daily News, March 3, 1940; St. Louis Post-Dispatch, March 16, 1940.

48) Henry Schweinhaut, "Report to the Attorney General Concerning the Investigation of Arrests and Subsequent Procedure in Detroit Spanish Recruiting Cases"; Jackson to Norris, 5/3/40, box 106, Norris MSS. Also see, Robert Jackson, "The Federal Prosecutor," address delivered at the Second Annual Conference of U.S. Attorneys, 4/1/40, Washington, D.C.

49) The Nation (May 11, 1940), 584-585; Congressional Record (May 7, 1940), 5644-64.

50) All letters in box 104, Norris MSS.



51) See generally, Theoharis, Spying on Americans: Denner,  
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## **APPENDIX**



UNIVERSITY OF NEW HAMPSHIRE  
DURHAM, NEW HAMPSHIRE 03824

SCHOOL OF LIBERAL ARTS  
Department of History  
Social Science Center

8/26/78

William Webster  
Director  
Federal Bureau of Investigation  
Washington, D.C. 20535

Dear Director Webster,

Under the provisions of the Freedom of Information Act,  
5 U.S.C. 552, I am requesting access to Bureau of Investigation  
and Federal Bureau of Investigation files compiled through 1940  
of the following organizations:

American Association for Labor Legislation  
American Civil Liberties Union  
American Federation of Labor  
American Friends Service Committee  
Association for Improving the Condition of the Poor  
Brotherhood of Railroad Trainmen  
International Association of Machinists  
International Brotherhood of Electrical Workers  
International Labor Defence  
International Ladies' Garment Workers' Union  
International Typographical Union  
Industrial Workers of the World  
National Association for the Advancement of Colored People  
National Association of Manufacturers  
National Metal Trades Association

UNIVERSITY OF NEW HAMPSHIRE  
DURHAM, NEW HAMPSHIRE 03824

COLLEGE OF LIBERAL ARTS  
Department of History  
Horton Social Science Center

Williams, Freedom of Information request, continued

National Miners' Union  
National Textile Workers Union  
Progressive Miners of America  
Trade Union Educational League  
Trade Union Unity League  
Unemployed Citizens League  
United Mine Workers of America  
United Producers League  
United Textile Workers of America  
Workers Ex-Servicemen's League  
West Virginia Mine Workers Union

I am also requesting access to the files compiled by the Bureau of Investigation and the Federal Bureau of Investigation through 1940 of the following persons:

Jane Addams  
George Weston Anderson  
Roger Baldwin  
Charles Beard  
Mary Beard  
Hugo Black  
William E. Borah  
Louis D. Brandeis

UNIVERSITY OF NEW HAMPSHIRE  
DURHAM, NEW HAMPSHIRE 03824

COLLEGE OF LIBERAL ARTS  
Department of History  
Horton Social Science Center

Williams, Freedom of Information request, continued

Zechariah Chafee, Jr.

John R. Chamberlain.

Clarence Darrow

Eugene Debs

John Dewey

John DosPassos

Theodore Dreiser

James A. Farrell

John Finerty

Felix Frankfurter

William Green

Learned Hand

Oliver Wendall Holmes, Jr.

Hiram Johnson

Robert M. LaFollette, Sr.

Suzanne LaFollette

John L. Lewis

Max Lowenthal

George Norris

Gerald P. Nye

Roscoe Pound

Carlo Tresca

George F. Vanderveer

UNIVERSITY OF NEW HAMPSHIRE  
DURHAM, NEW HAMPSHIRE 03824

COLLEGE OF LIBERAL ARTS  
Department of History  
Horton Social Science Center

Williams, Freedom of Information request, continued

Robert F. Wagner, Sr.

Henry Wallace

Frank P. Walsh

Thomas J. Walsh

Harry Weinberger

As you know, the act permits you to reduce or waive fees when the release of the information is considered as "primarily benefiting the public". I believe that this request fits that category and I therefore ask you to waive any fees.

If all or part of this request is denied, please cite the specific exemptions which you think justifies your refusal to release the information, and inform me of the appeal procedures available to me under the law.

I would appreciate your handling this request as quickly as possible and look forward to hearing from you within ten days, as the law stipulates.

Sincerely, .

*David Williams*  
David Williams



## UNITED STATES DEPARTMENT OF JUSTICE

## FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

January 19, 1979

Mr. David Williams  
Department of History  
University of New Hampshire  
Durham, New Hampshire 03824

Dear Mr. Williams:

This is in response to your Freedom of Information-Privacy Acts request dated December 8, 1978.

I have noted in the above-mentioned letter, you desire to withdraw your request on Mr. Roger Baldwin.

Based on the additional information you have furnished regarding the other individuals of your request, we are currently conducting a search of the index to our central records system and you will be notified at a later date of the results.

Please be advised that a search of the index to our central records system revealed no information to indicate that the Association for Improving the Condition of the Poor, West Virginia Mine Workers Union, and United Producers League have been the subjects of an investigation by the FBI through 1940.

If you believe the above may have been recorded by the FBI incident to the investigation of some person or another organization, please advise us of the details describing the specific incident or occurrence. Thereafter, further effort will be made to locate, retrieve and process any such records.

As a result of a preliminary review of documents pertaining to the organizations mentioned in your request dated August 26, 1978, it is believed that processing of these documents may result in charges of approximately \$9,800. Department of Justice regulations (Title 28, Code of Federal Regulations, Part 16.46) require notification to a requester when anticipated charges exceed \$25. This letter constitutes such notification regarding the following organizations:

EXHIBIT E

Mr. David Williams

National Textile Workers Union  
American Civil Liberties Union  
National Metal Trades Association  
Workers Ex-Servicemen's League  
International Association of Machinists  
Progressive Miners of America  
Unemployed Citizens League  
American Association for Labor Legislation  
National Miners' Union  
International Typographical Union  
American Friends Service Committee  
Trade Union Educational League  
International Labor Defense  
Trade Union Unity League  
National Association of Manufacturers  
National Association for the Advancement  
of Colored People  
Industrial Workers of the World  
Brotherhood of Railroad Trainmen  
United Textile Workers of America  
International Ladies' Garment Workers' Union  
International Brotherhood of Electrical Workers  
American Federation of Labor  
United Mine Workers of America

Because of the extensive work involved, it will be necessary for you to furnish a deposit of 25 percent of the estimated cost, the remainder to be paid upon the completion of the processing of your requests.

I must caution, however, that your indication of approval and consent to incur such fees will not necessarily result in the entire contents of our records being disclosed to you, since we are guided by the provisions of the Freedom of Information Act (Title 5, United States Code, Section 552) and the Privacy Act of 1974 (Title 5, United States Code, Section 552a) in disclosing material from our records.

This is in accordance with Title 28, Code of Federal Regulations, Section 16.9 (e)(1) which provides that where the anticipated fee chargeable under this section exceeds \$25, an advance deposit of 25 percent of the anticipated fee or \$25, whichever is greater, may be required.

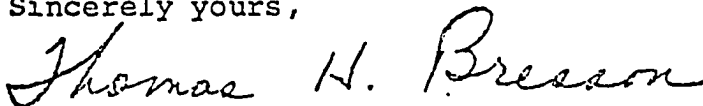
Mr. David Williams

Accordingly before taking further action, I will await receipt of your check or money order payable to the Federal Bureau of Investigation in the amount of \$2,450.

Your request for a waiver of fees has been considered in accordance with the provisions of Title 5, United States Code, Section 552 (a)(4)(A) which permits an agency to waive or reduce fees in the public interest when furnishing information is considered as primarily benefiting the general public. In balancing the potential public benefit in this instance against the concomitant expenditure of public funds, we have determined that under reasonable standards the interests of the general public appear more likely to be served by the preservation of public funds. Therefore, your request for a waiver of fees is denied.

If you disagree with the decision regarding a fee waiver, you may appeal within thirty days to the Associate Attorney General. Appeals should be directed in writing to the Associate Attorney General (Attention: Office of Privacy and Information Appeals), Washington, D. C. 20530. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal."

Sincerely yours,



Thomas H. Bresson, Acting Chief  
Freedom of Information-Privacy  
Acts Branch  
Records Management Division



University of New Hampshire Durham, New Hampshire 03824

College of Liberal Arts  
Department of History  
Horton Social Science Center

February 10, 1979

Deputy Attorney General  
Office of Privacy and Information Appeals  
Washington, D.C. 20530

Re: Freedom of Information Appeal

Dear Sir,

This is an appeal of the decision made by the Federal Bureau of Investigation denying a waiver of fees for information requested under the provisions of the Freedom of Information Act, 5 U.S.C. §552. Enclosed is a copy of the letter from Thomas H. Bresson, Acting Chief, Freedom of Information-Privacy Acts Branch, Records Management Division, dated January 19, 1979.

The records requested are necessary to complete a Ph.D. dissertation at the University of New Hampshire and will later be published as articles in a historical journal. Publication "can be considered as primarily benefiting the general public."

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "David Williams".

David Williams

EXHIBIT F





# United States Department of Justice

OFFICE OF THE ASSOCIATE ATTORNEY GENERAL

WASHINGTON, D.C. 20530

Mr. David Williams  
College of Liberal Arts  
Department of History  
Horton Social Science Center  
University of New Hampshire  
Durham, New Hampshire 03824

SEP 19 1968

Dear Mr. Williams:

You appealed from the refusal by the Federal Bureau of Investigation to waive the customary fees involved in the processing of your request for access to information pertaining to the Industrial Workers of the World (IWW) and the Socialist Party.

On the basis of the information available to me, it is my opinion that your request for a waiver of fees in this case cannot be granted. I simply cannot conclude at this time that the release of these records to you can be considered as primarily benefiting the general public, which is the customary test for the granting of fee waivers. 5 U.S.C. 552(a)(4)(A). You should know that the Department of Justice receives numerous requests for information pertaining to political and other organizations from individuals who assert that, in view of the nature of the requested records, a waiver of fees is justified. If each such waiver were granted, the Department would incur tremendous expenditures of time and resources, with no real guarantee of any benefit to the general public. In this particular case, it is my opinion that the release to you of the requested records would not result in any significant benefit to the general public. It seems to me, rather, that the interests of the general public will better be served in this case by the preservation of public funds.

I am prepared to reconsider this action and to apply any favorable decision retroactively, if the records actually released to you are such that the release can be said primarily to benefit the general public.

EXHIBIT D

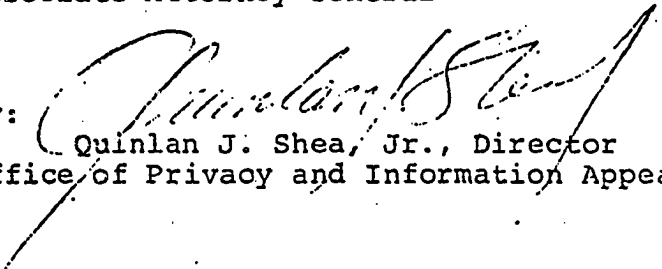
- 2 -

If you are dissatisfied with my action on this appeal, judicial review is available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, which is also where the records you seek are located.

Sincerely,

Michael J. Egan  
Associate Attorney General

By:

  
Quinlan J. Shea, Jr., Director  
Office of Privacy and Information Appeals

UNITED STATES OF AMERICA  
DEPARTMENT OF JUSTICE  
FREEDOM OF INFORMATION-PRIVACY ACTS APPEAL

In re  
FOIPA Request of  
David J. Williams

FOIPA Appeal No. 9-1005

Memorandum in support  
of Waiver of Processing  
Fees

This Memorandum of Points and Authorities in support of Mr. David J. Williams' request for a waiver of processing fees for his FOIPA requests of December 8, 1978, and thereafter, is hereby submitted to the FOIPA Appeals Office of the Justice Department, by his attorney, Raymond M. Dall'Osto.

Henceforth, for the convenience of the requesting party and his counsel, copies of all correspondence and administrative decisions should be sent to both Mr. Williams and his counsel.

Dated this 21st day of January, 1980.

RAYMOND M. DALL'OSTO

Attorney for Requesting Party

P.O. Address:  
632 E. Lake View Avenue  
Milwaukee, WI 53217  
(414) 962-8303 or 272-4032

## (1) BACKGROUND OF REQUEST

In Autumn, 1977, David J. Williams, a graduate history student at the University of New Hampshire in Durham submitted a FOIPA request for information regarding FBI surveillance of various left, labor and immigrant groups in the Northeast United States in the early 20th century. After some confusion at the Justice Department level, an expanded request was submitted on behalf of Mr. Williams by his counsel on March 17, 1978. Copy attached as Exhibit A. Two responses from the Justice Department were made in April and November 1978. Copies attached as Exhibits B and C. Both on August 26 and on December 8, 1978, Mr. Williams resubmitted more particular requests for FBI files on these subject areas. In all of the 1978 requests, a waiver of processing and/or copying charges was asked for.

The appeal by Mr. Williams of the earlier denial for a fee waiver was rejected by Associate Attorney General Michael Egan on December 19, 1978. Copy of denial attached as Exhibit D. Mr. Quinlan Shea joined with Mr. Egan in that rejection but stated a proviso:

"I am prepared to reconsider this action and to apply any favorable decision retroactively, if the records actually released to you are such that the release can be said primarily to benefit the general public."

Other than a paragraph devoted to the allegedly inordinate expenses of a fee waiver, no reasons as to why a fee waiver was not justified were given by the Associate Attorney General.

The Justice Department FOIPA Branch also denied the December 8, 1978 fee waiver request of Mr. Williams in a letter dated January 19, 1979. Copy attached as Exhibit E. Acting FOIPA Branch Chief Thomas H. Bresson stated in that letter, regarding the fee waiver request:

"In balancing the potential public benefit in this instance against the concomitant expenditure of public funds, we have determined that under reasonable standards the interests of the general public appear more likely to be served by the preservation of public funds. Therefore, your request for a waiver of fees is denied."

On February 10, 1979, within the 30 day limit for fee waiver appeals outlined by Mr. Bresson, Mr. Williams filed his notice of appeal of Mr. Bresson's denial with the Justice Department Office of Privacy and Information Appeals. Copy attached as Exhibit F. Mr. Williams resubmitted a less extensive FOIPA request on February 26, 1979 (Copy attached as Exhibit G), and his fee waiver request was again denied on April 16, 1979, with the same language as the January 19th denial. See copy attached as Exhibit H. Mr. Williams also filed a notice of appeal of this denial on May 5, 1979. See Exhibit I attached.

As Mr. Williams' research progressed, further delay in reviewing needed documents became intolerable. The Librarian at the Harvard Law School Library indicated to Mr. Williams on May 17, 1979 that the records he was requesting

"... constitute a very important scholarly source which will be of considerable interest to our faculty and students, to legal scholars generally, and to political scientists, historians, and others concerned with the period covered (1920-1940) and these individuals."

Copy of letter of Morris L. Cohen attached as Exhibit J.

In 24 Historical New Hampshire (Spring 1979) 1-31, Mr. Williams made public the first results of his initial research of 1977-78. Copy of article attached as Exhibit K. On October 30, 1979, based on the advice of counsel and the earlier retro-active application statement of Messers Egan and Shea, Mr. Williams notified David G. Flanners of the FBI Records Management Division that he would pay \$1,100.00 in processing and copying fees under protest, pending a decision in this continuing appeal. Copy attached as Exhibit L.

Processing of the more limited \$1,100.00 request is now underway. Processing has been held in abeyance on the other past requests, as the anticipated fees for such amount to nearly \$10,000.00. Mr. Williams hereby appeals the denial of all his fee waiver requests and asks that fee waivers be granted for not only the \$1,000.00 estimate of records but also on his other requests. Supporting arguments for Mr. Williams' position are set out below.

2. FEE WAIVER IS IN ORDER AS FURNISHING THE INFORMATION REQUESTED  
CAN BE CONSIDERED AS PRIMARILY BENEFITTING THE GENERAL PUBLIC

Mr. Williams, in his series of FOIPA requests regarding FBI surveillance of political groups in 1920-1940, is not seeking such information for personal gain. He has already stated that he will give all such records obtained to a renowned university library for public use. See Exhibit J attached. The results of his initial research have been publicly disseminated (see Exhibit K), and Mr. Williams wishes to follow up and expand on his thesis.

More specifically, his thesis is that despite the administrative changes and rules initiated in 1924 to curb the GID (later FBI) political surveillance abuses of 1918-1924, in fact, despite the reforms, constitutional violations occurred with regularity from 1924 to 1936, when President Roosevelt reinstituted the FBI political surveillance program. Scholars and even the Senate Intelligence Committee Reports in the mid-1970's have seemingly accepted the view that administrative reform successfully curbed FBI domestic abuses from 1924-1936. If this can be shown either to be the case, or to be the opposite of what really occurred, the benefit of the addition of such revelations to the public debate going on right now regarding legislation to charter FBI activities and to provide remedies for constitutional abuses could be immense. That furnishing such information free of processing charges is primarily in the public benefit is clear.

Although opponents of stricter controls on FBI political surveillance would probably prefer that such information "remain quiet" via perhaps inordinately large processing charges, clearly this view is not an acceptable reason for not waiving the fees regarding these requests. In fact, the public interest in open government and fully informed legislative debate overwhelming favors a fee waiver for Mr. Williams' requests.

This case can be readily distinguished from other cases where the administrative agency's balancing of "benefit to the general public interest" against the

"concomitant expenditure of public funds" caused by a fee waiver being granted can be seen as reasonable. In Rizzo v. Tyler, 438 F. Supp. 895 (S.D.N.Y. 1977), the "public interest" standard for fee waivers in FOIPA requests was discussed in detail, and the comments of the sponsor of the 1974 Amendments was cited to indicate "that the standard be 'liberally construed.'" Rizzo v. Tyler, supra, at 900. The court in Rizzo held that the plaintiff prisoner in that case, who wanted to clear his name of allegedly slanderous accusations, did not show a requisite "public interest" to require a fee waiver. Rizzo's private benefit easily out-weighed the public benefit in that calculus, and the fact of his indigency was held to be not enough to necessitate a waiver of fees without a showing of public benefit.

Mr. Williams' requests are more akin to the fee waiver requests at issue in Fitzgibbon v. CIA, 76-700 (D.D.C. 1/10/77) and Eudey v. CIA, 79-1198 (D.D.C. 10/26/79). Copies attached as Exhibits M and N.

In Fitzgibbon, supra, plaintiff journalist/historian Alan Fitzgibbon requested CIA documents on the abduction of Jesus de Galindez by Dominican Republic dictator Trujillo's agents in the United States in 1956. The information was to be used in a book on the case that Fitzgibbon was preparing. His request for a waiver of fees was denied by the CIA for similar reasons (or lack thereof) as in Mr. Williams' case herein. After appealing this denial to the U.S. District Court, Judge Aubrey Robinson ruled that the CIA's reasons for denying a fee waiver were arbitrary and capricious and ruled in favor of Mr. Fitzgibbon's fee waiver request, finding a sufficient public benefit to be present.

In Eudey, supra, plaintiff graduate historian requested a fee waiver on CIA documents "concerning relations between the United States and Italian and French trade unions during the post-World War II period . . . intended for incorporation in a book analyzing the effects of United States foreign policy in this area." The CIA felt that since many of the documents that Ms. Eudey requested were exempt from disclosure, furnishing the remaining information would not benefit the general public and therefore,

her fee waiver request could be denied.

As District Judge Robinson stated in his decision in Eudey, citing the legislative history of 5 U.S.C. § 552 (a)(4)(A), fees are not to be used as an obstacle to disclosure of requested information. Citing Fitzgibbon, Judge Robinson stated that "an agency's decision not to waive fees is arbitrary and capricious when there is nothing in the agency's refusal of a fee waiver which indicates that furnishing the information requested cannot be considered as primarily benefiting the general public."

In the instant administrative appeal of the FBI's denial of Mr. Williams' fee waiver request, nothing in the denial of such request is shown why the release of the requested documents would not primarily benefit the general public. Nothing is stated but the unsupported conclusory line that in the Bureau's opinion, release would not benefit the general public.

It is impossible for counsel herein to accept this unsupported conclusion, given the present ongoing Congressional debate on proposals for an FBI Charter; additional administrative versus statutory remedies for intelligence abuses, whether a stronger oversight mechanism is needed, how much discretion should be left to the Bureau director under the Charter, especially when constitutional rights are involved (as in political surveillance cases), etc.

The actual record of the GID/FBI from 1924-1936, when it supposedly was reformed vis-a-vis domestic intelligence abuses by executive and administrative orders is of great importance and benefit to the general public given the ongoing debate. This period has been practically<sup>c</sup> untouched by historians, and from the indications Mr. Williams has found to date, it would appear that the internal domestic intelligence reforms of the 1920's were less than effective.

The American public has a right to fully know the actual record of the domestic intelligence abuses of its national law enforcement agency, at least as much as it has a right to know, without having to pay processing fees, etc., the record of



Dominican intelligence abuses in 1956 (Fitzgibbon) and CIA intervention in foreign trade unions (Eudey). Moreover, it is counsel's position that all of the information requested by Mr. Williams will, when released, impart a greater benefit to the general American public because it concerns our government's own interaction with the American citizenry.

If the American public and Congress are to make reasoned choices in the 1980's as to what must be done to protect our precious constitutional rights in the face of increased international tension and bureaucratic tendencies to utilize broadened and sophisticated intelligence surveillance techniques, unfettered release of information such as has been requested by Mr. Williams is of the utmost benefit to the general public.

As George Santayana said, those who fail to learn from the mistakes of the past are doomed to repeat them. Unless full and unfettered disclosure occurs at this point in our history, we stand a much greater risk of never being able to learn of the past (and perhaps continuing) mistakes and abuses of our national intelligence agencies. At that point, a democratic vision of America in the near future could change to the following prediction:

The past is whatever the records and the memories agree upon. And since the party is in full control of all records, and in equally full control of the minds of its members, it follows that the past is whatever the party chooses to make it. Six means eighteen, two plus two equals five, war is peace, freedom is slavery, ignorance is strength. George Orwell, 1984

### (3) CONCLUSION

For the reasons and arguments above stated, the Department of Justice should grant Mr. David Williams a full fee waiver as to all the information he has requested to date, as the release of such records will primarily benefit the general public and no showing to the contrary has been made by the FBI or the Department of Justice.

Counsel requests that this administrative appeal be acted on promptly by the Justice Department so as to afford the requesting party an early opportunity

to appeal any denial to the United States District Court for the District of  
Columbia.

Dated this 21<sup>st</sup> day of January, 1980.

  
Raymond M. Dall'Osto  
Attorney at Law



# United States Department of Justice

OFFICE OF THE ASSOCIATE ATTORNEY GENERAL

WASHINGTON, D.C. 20530

21 MAR 1980

Mr. Raymond M. Dall'Osto  
632 East Lake View Avenue  
Milwaukee, Wisconsin 53217

Dear Mr. Dall'Osto:

This is an interim response to your letter dated January 21, 1980, on behalf of your client, Mr. David Williams.

On the basis of the new information you have provided, I have decided that we should reopen the matter of your client's fee waiver application, which was originally denied on administrative appeal by our letter dated December 19, 1978. My decision to reconsider our previous ruling is not, of course, any guarantee or indication that our ultimate determination will result in a complete or partial fee waiver to Mr. Williams. It reflects only my conclusion that you have now presented on his behalf a factual predicate for considering carefully and on a particularized basis whether the records requested by your client and the use he is making of the records he is receiving are such that a fee waiver should be granted. By copy of this letter, I am requesting the Federal Bureau of Investigation to inform me of its views on this matter by April 11, 1980. I then anticipate presenting Mr. Williams' appeal to the Associate Attorney General for his personal decision by the end of April or in early May.

In the interim, I ask that you clarify one potentially significant factor for me. In his letter of February 26, 1979, Mr. Williams narrowed his original request to encompass records as to which the estimated fees were only \$2,500, as set forth in Mr. Bresson's letter of April 16, 1979. On page 3 of your Memorandum of Points and Authorities, dated

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January 21, 1980, you are obviously referring to the fees estimated in conjunction with Mr. Williams' unnarrowed request -- approximately \$9,800, as set forth in Mr. Bresson's letter of January 19, 1979. I do not consider that the amount of money involved in a requested fee waiver is irrelevant and would appreciate your prompt clarification of this point, either by letter, or by calling me at 202-633-4082. Do be assured, however, that my decision to reconsider our earlier position is not itself dependent on the amount of money involved.

Please feel free also to contact me on any other aspect of this matter, if for example you have additional facts or arguments which you wish to be brought to the attention of Associate Attorney General Shenefield, or if you wish to propose any compromise resolution for his consideration. I also ask that you convey to Mr. Williams my compliments on his most interesting and informative lead article in the Spring 1979 issue of Historical New Hampshire.

Sincerely,

John H. Shenefield  
Associate Attorney General

By: Quinlan J. Shea, Jr., Director  
Office of Privacy and Information Appeals

cc: FOIPA Branch  
Federal Bureau of Investigation

✓ Mr. David Williams

RAYMOND M. DALL'OSTO  
ATTORNEY AT LAW

632 EAST LAKE VIEW AVENUE  
MILWAUKEE, WISCONSIN 53217  
(414) 962-8303 or 272-4032

ADMITTED TO PRACTICE  
IN WISCONSIN AND  
ILLINOIS

May 2, 1980

Mr. Quinlan Shea, Jr., Director  
Office of Privacy and Information Appeals  
U.S. Department of Justice  
10th & Constitution Avenue, N.W.  
Washington, D.C. 20530

Re: FOIA Appeal of David J. Williams, No. 9-1005

Dear Mr. Shea:

Thank you for your letter of March 21, 1980. I called your office there-  
after and left a message that I would be responding in a letter. The following  
is my response.

The individuals' and groups' files that Mr. Williams does not want a file  
search and copying fee waiver for (as such files are already available) include  
the following:

1. American Civil Liberties Union
2. American Assoc. for Improving the Condition of the Poor
3. American Friends Service Committee
4. National Assoc. of Manufacturers
5. National Metal Trades Assoc.
6. United Producers League
7. West Virginia Miners
8. American Association for Labor Legislation.
9. Industrial Workers of the World

The exclusion of the files of the above groups from Mr. Williams' re-  
quest should substantially reduce the amount of records requested and of  
money involved in his requested fee waiver.

Mr. Williams wishes to continue his fee waiver request for all of the  
other groups and individuals listed, to wit:

ORGANIZATIONS

1. National Textile Workers Union

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2. Workers Ex-Servicemen's League
3. International Association of Machinists
4. Progressive Miners of America
5. Unemployed Citizens League
6. National Miners' Union
7. International Typographical Union
8. Trade Union Educational League
9. International Labor Defense
10. Trade Union Unity League
11. National Association for the Advancement of Colored People
12. Brotherhood of Railroad Trainmen
13. United Textile Workers of America
14. International Ladies' Garment Workers' Union
15. International Brotherhood of Electrical Workers
16. American Federation of Labor
17. United Mine Workers of America

#### INDIVIDUALS

1. Jane Addams, b. September 6, 1860, Cedarville, Illinois
2. George Weston Anderson, b. September 1, 1861, Acworth, New Hampshire
3. Charles Austin Beard, b. November 27, 1874, Knightstown, Indiana
4. Mary Beard, b. August 5, 1876, Indianapolis, Indiana
5. Hugo LaFayette Black, b. February 27, 1886, Harlan, Clay County, Alabama
6. William Edgar Borah, b. June 29, 1865, Fairfield, Illinois
7. Louis Dambitz Brandels, b. November 13, 1856, Louisville, Kentucky
8. Zechariah Chafee, Jr., b. December 7, 1885, Providence, Rhode Island
9. John Rensaelear Chamberlain, b. October 28, 1903, New Haven Connecticut
10. Clarence Darrow, b. April 18, 1857, Kinsman, Ohio
11. Eugene Victor Debs, b. November 5, 1855, Terre Haute, Indiana
12. John Dewey, b. October 20, 1859, Burlington, Vermont
13. John Rogerigo Dos Passos, b. January 14, 1896, Chicago, Illinois
14. Theodore Dreiser, b. August 27, 1871, Terre Haute, Indiana
15. John Finerty, b. unknown
16. Felix Frankfurter, b. November 15, 1882, Vienna, Austria
17. William Green, b. March 3, 1870, Coshocton, Ohio
18. Learned Hand, b. January 27, 1872, Albany, New York
19. Oliver Wendall Holmes, b. March 8, 1841, Boston, Massachusetts
20. George Huddleston, b. November 11, 1869, Wilson County Tennessee

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21. Hiram Warren Johnson, b. September 2, 1866, Sacramento, California
22. Robert Marion LaFollette, b. June 14, 1855, Primrose, Wisconsin
23. Suzanne LaFollette, b. unknown
24. Fiorello H. LaGuardia, b. December 11, 1882, New York City, New York
25. John Llewellyn Lewis, b. February 12, 1880, Lucas, Iowa
26. Max Lowenthal, b. 1888, Minneapolis, Minnesota
27. George William Norris, b. July 11, 1861, Sandusky, Ohio
28. Gerald P. Nye, b. December 19, 1892, Hortonville, Wisconsin
29. Roscoe Pound, b. October 27, 1870, Lincoln, Nebraska
30. Carlo Tresca, b. 1879, Pulmona, Italy
31. George F. Vanderveer, b. unknown, Seattle, Washington
32. Robert Ferdinand Wagner, Sr., b. June 8, 1877, Nastatten, Germany
33. Henry Wallace, b. October 7, 1880, Adair County, Iowa
34. Frank Patrick Walsh, b. June 20, 1864, St. Louis Missouri
35. Thomas James Walsh, b. June 12, 1859, Two Rivers, Wisconsin
36. Harry Weinberger, b. 1886, New York City, New York
37. Burton K. Wheeler, b. February 27, 1882, Hudson, Massachusetts

Relative to FBI and Justice Dept. records dealing with criminal investigations, proposed prosecutions, etc., of the above, Mr. Williams' request would not include records of such crimes as murder, rape or armed robbery. However it would include records of all other criminal investigations regarding such offenses as sedition, disorderly conduct, unlawful assembly, etc., which may or may not have political implications. Antitrust prosecutions or investigations of unions, union leaders, or other requested social and political groups would still be included in Mr. Williams' fee waiver request.

If it becomes too difficult to separate out murder, rape and similar criminal investigation records of the requested individuals, Mr. Williams would be willing, in order to conserve on your copying costs, to have all criminal-related records of the requested groups and individuals made available to him in the FBI's public reading room in Washington, D.C. Mr. Williams would then review such, and indicate which relevant portions he would like to have copied (with fees waived per his request).

Relative to Mr. Williams' "harrowing" of his request in February 1979, this was done solely because he was given a small grant to cover the fees for some of his request. That "harrowed" request and agreement to pay some fees was done under protest (he still wants fees waived on those covered by the grant also), so that he could at least obtain some records with which to continue his research and writing.

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As you know, I set out arguments in my memorandum of January 21, 1980, showing the importance of Mr. Williams' research to the ongoing public discussion and debate as to exactly what measures should or need to be taken to charter and control American intelligence organizations. The aftermath of the alleged reforms of GID/FBI abuses by Attorney General Stone in 1924 has never been thoroughly documented by historians. As pointed out in a recent review of A. Theoharis', Spying on Americans (Temple Univ. Press 1978), copy attached as Exhibit 1 herein, a "critical omission" from Theoharis' and other historians' work is that they ignore the period 1924 - 1936 in American intelligence agency history. As Prof. Stone notes at pages 135-136 of his review of Theoharis' book, this omission is critical as an awareness and understanding of pre-1936 history in this area can only shed light "upon the related phenomena of 1936-1976". Did A.G. Stone's reforms work? or did the FBI continue its surveillance of political and social leaders and activist groups in spite of such?

No one has researched or written on this before and the answers to these questions and others, which will have great bearing on how far Congress goes in 1980 and beyond in enacting effective intelligence agency charters and controls, will come from Mr. Williams' research and writing. This is why his research is of great public benefit and why a fee waiver should be granted.

As noted by Mr. Lewis Perry in his letter of April 16, 1980, copy attached as Exhibit 2, Mr. Williams' present research "on the origins of political surveillance.....(is) important and original research". Mr. Williams was also contacted for his views in late March 1980 by Prof. Richard Kirkendall of the Organization of American Historians, who testified before Congressional committees regarding proposed amendments to the Freedom of Information/Privacy Acts now pending in Congress.

The public value of Mr. Williams' request is clear and I hope that you will grant his request as clarified above. Please call or write me if you have any questions, and, of course, when you reach a decision.

Yours truly,



Raymond M. Dall'Osto  
Attorney At Law

RMD:al

cc: D.J. Williams ✓

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